Wuest - Santos 1479 - TC 671-07 VAR

51829-6884

Martin O'Malley

Anthony G. Brown Lt. Governor



Margaret G. McHale

Ren Serey
Executive Director

STATE OF MARYLAND CRITICAL AREA COMMISSION CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401 (410) 260-3460 Fax: (410) 974-5338 www.dnr.state.md.us/criticalarea/

November 26, 2007

Ms. Chris Corkell
Talbot County Office of Planning and Zoning
11 N. Washington Street
Courthouse
Easton, Maryland 21601

Re: 1479

Wuest-Santos Variance

Dear Ms. Corkell:

Thank you for providing information on the above referenced variance request. The applicant requests variances to permit two nontidal wetland crossings and a stream crossing in order to construct a 12-foot wide residential driveway to access the construction envelope. The property, Deed Parcel B of Tax Parcel 45, is 17.6 acres and is designated as a Resource Conservation Area (RCA). The lot is currently undeveloped. The applicant proposes to place a 120-foot long expanse of driveway across nontidal wetlands and their buffers, and a 210-foot long driveway across a tributary stream and its buffer. Both nontidal wetlands and streams are classified as Habitat Protection Areas (HPA) in the Critical Area and are regulated as such through the Talbot County Code (§190-93). Total impervious surface proposed onsite is not provided; however, total proposed impervious surface in the Buffer will be 2,940 square feet. Deed Parcel B and Deed Parcel C of Tax Parcel 45, along with Tax Parcel 18, currently contain 9.987 acres of forest cover onsite (40.1% of the total site area).

This office opposes granting the requested variances on this site, unless the Board performs the necessary analysis to determine that there is no alternative development envelope that avoids impacting Habitat Protection Areas. In reviewing the site plan, there appears to be approximately 25,000 square feet of developable land onsite, directly adjacent to Maryland Highway 33, which could accommodate a reasonable home site with a driveway, thereby avoiding the need for variances to impact HPAs. As a reference, we note that Tax Map 38 Parcel 16, which is located directly north of this property, is currently developed with a house, garage, overhang, and driveway on a parcel that is very similar in size and topography to the 25,000 square foot area that we suggest this

applicant use as a development envelope. Based on this information, it appears that the applicant could create a development envelope of reasonable and significant use in this location and entirely avoid the need to acquire a variance.

Impacts to Habitat Protection Areas

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In 2002 and 2004, the General Assembly strengthened the Critical Area Law and reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, particularly emphasizing the importance of the 100-foot Critical Area Buffer. In particular, the General Assembly reaffirmed the stringent standards that an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. One condition that the State law provides is that variances to a local jurisdiction's Critical Area program may be granted **only** if a Board of Appeals finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship;" that is, "denial of reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The County must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

Pursuant to the site plan, the applicant is proposing two nontidal wetland crossings and a stream crossing in order to construct a 12-foot wide residential driveway to access the proposed construction envelope for the property. However, the site plan also reveals that there is approximately 25,000 square feet of land onsite, directly adjacent to Maryland Highway 33, which is located outside of Critical Area Habitat Protection Areas. Given that an opportunity may exist to construct a home without the need for variances, we do not believe that the County has evidence on which to base a finding that, without the granting of these variances, the applicant would be denied reasonable and significant use of the entire lot or parcel.

In addition, Talbot County Code §190-14 defines Habitat Protection Areas (HPA) as "the shoreline development buffer, nontidal wetlands, habitats of species in need of conservation, threatened and endangered species, plant and wildlife habitats, and anadromous fish propagation waters." These areas are protected under §190-93E(8)(d), which states that HPAs shall be "conserved and protected," and that "development activities should be located, generally, as close to a public right-of-way as possible." By proposing to construct a road that crosses two nontidal wetlands and a stream, the applicant is not developing the property in a manner that conserves and protects Critical Area HPAs. Placing the development envelope closer to Maryland Highway 33, would negate the need for any variances, HPA impacts would be avoided, and development activities would be located as close to the public right-of-way as possible, consistent with Talbot County Code §190-93E(8)(d).

The State law establishes the presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area

law. The Board must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented. The State law, including the presumption of non-conformance, applies to all variance decisions in the Critical Area. [2007 Laws of Maryland, Chapter 221(2)]. Thus, the Board must find that the applicant has overcome the burden to meet each and every one of the County's variance standards in order to grant a variance. Because we believe that the applicant has failed to demonstrate that an unwarranted hardship would exist without a variance, we oppose the applicant's variance requests. I have discussed each one of the variance standards below as it pertains to this site.

Relevant Variance Standards

1. That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.

Currently, the lot is undeveloped. The applicant proposes to place a 120-foot long, expanse of driveway across nontidal wetlands and their buffers, and a 210-foot long driveway across a tributary stream and its buffer, in order to access a development envelope. However, there is 25,000 square feet of land onsite that appears to be developable, directly adjacent to Maryland Highway 33, which could accommodate a reasonable home with a driveway, thereby avoiding the need for variances to impact HPAs. The State law standards, applicable to this variance request, define "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, he would be denied reasonable and significant use of **the entire parcel or lot**. Given that an opportunity may exist to construct a home on this site without the need for variances, we do not believe that the County has evidence on which to base a finding that, without the granting of these variances, the applicant would be denied reasonable and significant use of the entire lot or parcel.

2. That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction.

The Board should delay its decision until it can determine that, without the variance, the applicant cannot maintain reasonable use of this property for residential purposes. Establishing an envelope near the highway would minimize impacts to nontidal wetland and stream areas. No property owner has the right to build over nontidal wetlands or a stream if there is the opportunity to develop in a manner that avoids impacting HPAs. Therefore, the denial of variances to cross nontidal wetland and stream areas would not deny the applicant a right commonly enjoyed.

3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area.

The granting of variances to permit two nontidal wetland crossings and a stream crossing, when the opportunity appears to exist to create a development envelope that would avoid the need for variances to cross Habitat Protection Areas, would constitute a special privilege upon the applicant which would be denied to others in the County as well as within other jurisdictions in the Critical Area.

4. The variance request is not based upon conditions or circumstances, which are the result of the actions, by the applicant, nor does the request arise from any condition conforming, on any neighboring property.

From the information provided, it does not appear that the variance request is based on conditions or circumstances that are the result of the applicant or from a neighboring property. Therefore, it appears that the applicant has met this standard.

5. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.

Granting of this variance is not in harmony with the general spirit and intent of the Critical Area law and regulations. An increase in impervious surface through nontidal wetlands and a stream, which are both Habitat Protection Areas under the Talbot County Code, and its consequential disturbance to the land results in increased stormwater and sediment runoff, the loss of essential infiltration opportunities, and the destruction of significant habitat onsite. Given that the applicant can likely develop this property without impacting HPAs, the approval of this variance would not be in harmony with the general intent and spirit of the Critical Area Law.

This letter has addressed five of the relevant variance standards. Based on the information provided, only one of the five variance standards is met. The County and State law provide that in order to grant a variance, the applicant must meet and satisfy each and every variance standard. This applicant has failed to meet all of the County standards. Because of the impacts to Habitat Protection Areas, and because the applicant has not met each one of Talbot County's variance standards, this office recommends that the Board deny the applicant's request for this variance and require the applicant to locate the house and the limit of disturbance for construction of the house outside of HPAs.

Thank you for the opportunity to provide comments on this Board of Appeals variance request. Please include this letter in your file and submit it as part of the records for this variance. If you have any questions, please feel free to contact me at 410-260-3483.

Sincerely,

Natural Resource Planner

TC 671-07

DECISION TALBOT COUNTY BOARD OF APPEALS Appeal No. 1479

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:30 p.m., November 26, 2007, on the application of MARK E. WUEST and ROSSANA H. SANTOS ("Applicants"). The Applicants are seeking a variance to permit the construction of a residential driveway across non-tidal wetlands and the related buffer and the 100-foot tributary stream buffer, as expanded, to provide access to the approved residential building site on their property. The property address is 6554 Tilghman Island Road, Sherwood, Maryland 21665 and is in the Rural Conservation (RC) zone. It is owned by the Applicants. The request is made in accordance with Chapter 190 Zoning, Article II, §190-14, Article X, §190-77, Article XII, §190-93E(3)(b)(c), and Article XIV, §190-104 of the Talbot County Code ("Code").

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, Rush Moody, Margaret Young, and John Sewell. David R. Thompson, Esquire, Easton, Maryland, represented the Applicants. Marianne Dise, Assistant Attorney General, represented the State of Maryland, Critical Area Commission. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

- 1. Application for variance with Attachment (2 pages).
- 2. Copy of a portion of the Talbot County tax map with the property highlighted.
- 3. Appeals Notice of Public Hearing.
- 4. Certificate of publication of the Notice of Public Hearing from the <u>Star-Democrat</u>.

- 5. Notice of hearing with a list of nearby property owners attached.
- 6. Copy of critical area variance requirements from the Code.
- 7. Staff memorandum.
- 8. Sign maintenance agreement.
- 9. Sheet labeled "Attached Plan Exhibits".
- 10. Maryland Department of the Environment Letter of Authorization.
- 11. Color Aerial Site Plan by Lane Engineering.
- 12. Site plan titled "Variance Request Exhibit".
- 13. Site plan titled "Proposed Conditions".
- 14. Letter from the Critical Area Commission, dated November 20, 2007.
- 15. Letter from the State Highway Administration, dated October 29, 2007.
- 16. Letter of authorization, dated September 27, 2007.
- 17. Letter to adjacent property owners, Gilbert and Helen Cowley, with attached email response.
- 18. Non-tidal wetlands management plan.

Bill Stagg, Lane Engineering, Inc., 117 Bay Street, Easton, Maryland 21601, was the first witness for the Applicants. He offered a site plan combining the contents of Board's Exhibits 11 and 12. It was admitted as Applicants' Exhibit No. 1. He said that the Applicants' parcel was created by a subdivision created in 1973. He offered a copy of the subdivision plat. It was admitted as Applicants' Exhibit No. 2. The parcel is Parcel 'B' on the subdivision plat.

Mr. Stagg said that the septic disposal area (SDA) for the parcel was previously approved by the Talbot County Health Department prior to 1997. However, the County required that the SDA be

reevaluated. The resulting new SDA was approved in 2006 and is shown on Applicants' Exhibit No. 1. It shifted less than five feet from the original site.

He offered a plat showing a lot line revision between the Applicants' property and the property owned by Mr. and Mrs. Kelly located adjacent to Tilghman Island Road. It was admitted as Applicants' Exhibit No. 3. The lot line was revised so that a driveway for the Kelly property is on the Kelly property.

The SDA on the Applicants' property is on the highest portion of the property and it is the only area on the entire parcel the Health Department would consider for its location.

The Applicants attempted to gain access to the building area of their property through a common driveway across a neighbor's property. The neighbor denied that access.

In order to access the building area of the parcel the Applicants sited the proposed driveway so that it will cross the two wetlands at their narrowest parts. The Maryland Department of the Environment (MDE) approved the location of the proposed driveway subject to a two to one mitigation requirement for forest impact. The total reforestation mitigation required is 4,916 square feet. The MDE has approved the Applicants' Phase I mitigation plan. As a part of the MDE approval the Applicants have executed a Declaration of Restrictive Covenants which has been recorded among the Land Records of Talbot County. A copy of the Declaration was offered and admitted as Applicants' Exhibit No. 4.

The Applicants requested that the Maryland Department of Natural Resources search its records for the presence of any threatened or endangered species on the property. The Department found no record of any such species. The Department's letter to that effect, dated December 20, 2006, was offered and admitted as Applicants' Exhibit No. 5.

An erosion and sedimentation plan for the site has been approved. Also, the State Highway Administration has approved the access to Tilghman Island Road.

The septic system will be conventional requiring three drainage trenches. The SDA is large enough for three additional systems in the event of a failure of the first.

Of the two wetland areas, one is a perennial stream with a base flow of water year round. The other is more of a drainage ditch draining from the area of Route 33 (Tilghman Island Road). Both are considered to be tributary streams and drain either Route 33 and/or the adjacent property to the north. Water flow under the proposed driveway will be provided by culverts covered with a gravel drive. No asphalt will be used.

The small area of fast land on the property near Route 33 could be used for a residence but it would require a variance from both the 150-foot setback from a highway and the setback from the first wetland area. Even then the septic line would have to cross both wetlands to get to the SDA.

The property is about 17 acres. Of the 17 acres about 10 non wetland acres make up the peninsula area that can only be accessed by crossing the two wetland areas.

The next witness was M. Stark McLaughlin, Environmental Planner, Lane Engineering, Inc. He prepared the mitigation plan for the property. The mitigation will be accomplished with plants specific for wetland habitats. Trees for the reforestation requirements have already been ordered for planting in the spring.

Mr. Stagg then testified that he did not request approval for a non-conventional septic system for the area of the property closest to Route 33 because they already had approval for a conventional system on the lot. He said that there is no sewer line available or planned for the area.

The Applicant, Mark Wuest, testified next. He is a former resident of Maryland. He purchased the property to make it his home. They are in the process of designing a residence and they wish to begin construction in 2008.

The final witness was Dr. Nick Kelly, Natural Resource Planner, Critical Area Commission. He offered a letter from the Commission addressing the issues presented by the application, dated November 26, 2007. It was admitted as Critical Area Commission's Exhibit No. 1. He said that when he reviewed the proposal he did so with a view to minimizing any impact on wetlands. In every case the Commission wants to make sure the applicant meets all of the criteria for the requested variance.

Mr. Thompson, in closing, raised the constitutional issue of taking. He said that the Applicants have the right to use the property for a residence and the denial of such would be an unconstitutional taking. He said that the instant case is a classic case for a variance with unique circumstances which would constitute an unwarranted hardship for the property owners absent the requested variance.

In response to a question raised by a Board member, Mr. Stagg said that bridges over the wetlands are not feasible. The driveway will be scraped out and covered with fabric and larger stone to contain the gravel drive.

The Board then considered the application. After discussion and upon motion, duly made and seconded, the Board made the following findings of fact and law:

- 1. All legal requirements pertaining to a public meeting were met.
- 2. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of the ordinance result in unwarranted hardship to the property owner. The 17 acre parcel is an approved residential lot. About 10 acres of the parcel are non-wetland and most of that fast land is accessible only by crossing two tributary streams or crossing a neighboring property. That area is the highest part of the property and the only area approved for a conventional septic disposal area. The small area of fast land adjacent to Route 33 does not contain any reasonable

building envelope, whereas the larger portion does have a building envelope that is available without a variance for structures.

- 3. A literal interpretation of the ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone.
- 4. The granting of the variance will not confer upon the property owner any special privilege that would be denied by the ordinance to other owners of lands or structures within the same zone.
- 5. The variance request is not based on conditions or circumstances which are the result of actions by the property owner nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
- 6. Greater profitability or lack of knowledge of the restrictions was not considered as sufficient cause for the variance.
- 7. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship.
- 8. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law, the Talbot County Critical Area Program and the Critical Area provisions of the ordinance.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicants, MARK E. WUEST and ROSSANA H. SANTOS (Appeal No. 1479) are GRANTED the requested variance consistent with the evidence presented to the Board of Appeals. The variance is subject to the following conditions:

1. The Applicants shall submit and comply with a Critical Area Forest Preservation Plan acceptable to the Talbot County Planning Office providing for mitigation in a ratio of two to one. The plan must be approved before a building permit will be issued.

2. The Applicants development plans shall meet the guidelines set forth in "A Guide to Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area".

 The Applicants shall make the wetland crossings as narrow as possible consistent with safe access.

The vote of the Board was five to zero approving the variance.

The variance granted by this decision will lapse and become null and void eighteen months following the date of this opinion, unless, prior to the expiration date, construction is commenced and diligently pursued toward completion.

GIVEN OVER OUR HANDS, this <u>7th</u> day of <u>January</u>, 2008.

TALBOT COUNTY BOARD OF APPEALS

Paul Shortall, Jr., Chairman

Rush Moody

Phillip Jones, Vice Chairman

Margaret Young

John Sewell

Board of Appeals/1479. Wuest Variance CA

Purpose of Appeal

The Applicant's request a Variance from the specific requirements of the Talbot County Code, Article XII, Section 190-93E (c) to permit the construction and use of a 12' wide residential driveway to access the building envelope and septic disposal area on their waterfront parcel. More specifically, a Variance is requested to permit two non-tidal wetland and stream crossings as follows: 1.) 210' of residential driveway crossing a tributary stream in the 100'Buffer, and; 2.) 120' of residential driveway crossing non-tidal wetlands as part of the 100' Buffer expanded to include contiguous non-tidal wetlands and their 25' buffers. The two crossings combined propose 2940 sq ft of impervious surface in the Buffer.

This Variance is requested in accordance with the provisions outlined in the Talbot county Code, Article XII, Section 190-104 A, B and D through K, inclusive.

Variance Findings

(a) Special Conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of this Ordinance will result in unwarranted hardship to the property owner;

Applicant's Response: Deed Parcel B, (subject parcel) is a parcel of record created in June 1973. A septic disposal area (SDA) was initially approved in 1997, but not platted. An approved SDA was re-affirmed and platted in 2006. The SDA is located in the interior of the parcel in the waterfront building envelope that straddles an upland ridge. The parcel is forested except along MD RT 33 and is dissected by the headwater reaches of an unnamed tributary to Back Creek. These headwaters begin on this parcel and flow southward to Back Creek. The waterfront development envelope on this parcel is landlocked and surrounded by tidal marsh, a perennial stream to the north and a non-tidal wetland trough to the east. Access to the SDA and this building envelope can only be constructed across this non-tidal wetland trough and the tributary stream. These site conditions are peculiar to this property resulting in the need for the requested Variance to access the building envelope.

(b) A literal interpretation of the Ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone;

Applicant's Response: All parcels must be afforded access to an approved building site. Without the relief requested, the Applicant's cannot access the only approved SDA on the site and the waterfront building envelope on the parcel. Similar waterfront parcels in the same zone enjoy the benefit of a waterfront building site.

(c) The granting of a variance will not confer upon the property owner any special privilege that would be denied by this Ordinance to other owners of lands or structures within the same zone;

Applicant Response: This Variance request will grant a simple access driveway to the building site on the parcel. The driveway location is not the Applicant's preferred layout, but is a layout that minimizes wetland disturbances to the extent feasible. Similar parcels in this same zone and in this immediate vicinity enjoy waterfront building envelope access.

(d) The variance request is not based on conditions or circumstances which are the result of actions by the property owner nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property:

Applicant Response: The Variance request is the result of natural land conditions peculiar and specific to this site and is not based on restrictions or conditions related to neighboring parcels. There is simply no way to access the SDA and building site on this parcel except to cross the stream and non-tidal wetland areas.

(e) Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance;

Applicant Response: The Applicant's seek a Variance permitting construction of a driveway to access the SDA and building envelope on the parcel. They seek to build one house on a parcel of record with one permitted development right. There is no additional subdivision potential for this parcel and no other motivation on the part of the Applicant's to increase profitability.

The Applicants are aware of the development constraints and restrictions specific to this parcel. In that regard, and on their behalf, Lane Engineering, LLC had conversations with Ms. Kerrie Gallo, Critical Area Commission staff and Ms. Mary Kay Verdery, Assistant Planning Officer for Talbot County, Maryland in October/November of 2006 and then held meetings on-site January 12, 2007 with Mr. Rod Schwarm, US Army Corps of Engineers, and again on January 26, 2007 with Ms. Kerrie Gallo, and Mr. Al Kampmeyer, Maryland Dept. of the Environment, to discuss the site conditions and proposed driveway routing and variance requirements.

It is our opinion that the agency staff reviewing this site concluded that the Applicant's should first evaluate and pursue any alternative access potential, and if no such access alternative could be secured, then a variance to cross the stream and non-tidal wetland area to access the building envelope was required and a reasonable request that minimized and mitigated impacts would be favorably considered. The Applicant's pursued access from a neighboring parcel to the north, but the owners would not grant the Applicant's any use of their driveway for shared access, (see attached Correspondence to Gilbert and Helen Cowley). Even this access route would have required a variance to cross the tributary stream along the north property line.

(f) The variance shall not exceed the minimum adjustment necessary to relieve the unwarranted hardship;

Applicant Response: The driveway is routed to cross the stream and wetlands at their narrowest expanse thus minimizing impacts to these sensitive areas.

(g) The granting of the Variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law, the Talbot County Critical Area program and the Critical Area provisions of this Ordinance.

Applicant Response: The impacts to water quality and fish, wildlife or plant habitat resulting from this driveway proposal are minimal, and are mitigated where required. The driveway crossings are designed to maintain flow under the driveway to both sides of the stream and nontidal wetland areas preventing any loss of hydrology or habitat value. The driveway construction requires clearing of the corridor and this tree removal is mitigated 2:1 on-site creating and expanding forest habitat over an open, fallow field. This forest mitigation also provides stream and wetland buffering and water quality benefits. The driveway surfacing will be clean aggregate which slows run-off and increases infiltration over traditional hard surface materials, and does not produce hydro-carbon pollutants associated with asphalt products.

The Critical Area Law has already limited development potential for water front parcels and zoning districts like this parcel, and development of this parcel is consistent with that aspect of the law. The law provides mechanisms for variances and related mitigation for specific applications where reasonable site access is prohibited without crossing the Buffer. This proposal is designed in accordance with these mechanisms and with the spirit of the Critical Area Law.



STAFF MEMORANDUM

Prepared by:

Elisa Deflaux

Date:

November 26, 2007

Appeals Case #:

1479

General Information:

Property Owners:

Mark Wuest and Rossana Santos

Agents:

Lane Engineering, LLC and David Thompson, Esquire

Requested Action:

Variances of the required 25' nontidal

wetland buffers setback and 100' Shoreline Development Buffer for crossing the tributary streams.

Purpose:

Applicants are requesting variances of the 25 foot nontidal wetland buffers and 100' Shoreline Development Buffer to 0 (zero) feet for the construction of a driveway to a residential building

site

Existing Zoning:

RC-Rural Conservation

Tax Map No:

Map 38, Grid 16, Parcel 45, Lot B

Location:

6554 Tilghman Island Road

Property Size:

17.6 Acres

Comprehensive Plan: The Comprehensive Plan states in Chapter 7, "Natural Resources Conservation and Sensitive Area Protection" states that "In accordance with Federal and State Policy and goal of "no net loss" of wetlands, the County will coordinate with Federal and State agencies to preserve existing wetlands where possible and to mitigate their destruction when necessary."

Zoning History: No zoning history is inconsistent with this request.

Permit History: This project has received approval from Maryland Department of the Environment for the wetland and stream crossing impacts. Mitigation for the disturbance will be accomplished on site. A Nontidal Wetland Management Plan is being prepared for this project.

Staff Recommendation:

- 1) A Critical Area Forest Preservation Plan will need to be submitted, reviewed and approved for this project.
- 2) This project will need to meet the guidelines for "A Guide to Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area."

Nontidal Wetlands Management Plan

&

Phase II Mitigation Plan

Non-tidal Wetland Protection, Creation & Establishment

Permit # 200762534 WMA # 07- NT - 2096

Knapps Narrows Farm Lot B
Tax Map 38 Parcel 21

Mark E. Wuest & Rossana H. Santos 730 Third Avenue New York, NY 10017-3206

> Lane Engineering, Inc. 117 Bay Street M. Stark McLaughlin Environmental Planner-Forester Easton, Maryland 21601

> > October 22, 2007

Components:

- Introduction
- Construction Schedule
- Hydrologic Information
- Substrate and Soil Conditions
- Planting List
- Planting schedule
- Monitoring Schedule
- Proposed Budget
- Protective Mechanisms
- Documentation

Introduction: The purpose of this plan is to protect the hydrologic regime and water quality of the wetlands, minimize alterations to surface or subsurface flow of water and provide mitigation for the proposed disturbance to the existing wetlands.

The nontidal wetlands on site have been identified as Palustrine Forested Needle leaved Evergreen and have been field delineated and survey located. The State of Maryland Department of the Environment Water Management Administration issued a Letter of Authorization #200762534/07-NT-20096 for the proposed construction and work to occur within the wetlands. (Attached)

The proposed mitigation site for the nontidal wetland impacts is located on site as indicated on Sheet 1 of 1 "Preliminary Mitigation Plan". The establishment of 4, 916 square feet of afforestation will provide the required 2:1 mitigation. The site is to be included in the overall Critical Area reforestation mitigations for the total limits of clearing (44,948 square feet) proposed. The mitigation site is currently a farmed hydric soil and adjacent to existing tidal and nontidal wetlands.

Construction Schedule: Grading and a rough cut of the 10 foot driveway will begin in December 2007 and continue as per on site and weather conditions allow into spring 2008. In stream work, culvert installation in the unnamed tributary of Back Creek is restricted during the period of March 1 through June 15, inclusive, of any year. The Planting will be completed in the spring of 2008. Plant material will be ordered in the October 2007 and all plantings of trees and shrubs seedling stock completed by May 15, 2008. Initial plantings of forest wetland species will be completed by June 30, 2008. Supplemental plantings of additional herbaceous and wetland plants will be conducted through the 2009 planting season as needed. After five (5) years, greater than 85% of the site shall be vegetated by the planted species approved by the regulatory agency or by a species composition agreed to by the regulatory agency.

- 1. After five (5) years, the site shall be dominated by native or adaptive wetland vegetation.
- 2. Native and natural species will be allowed to colonized the site and become established.

Hydrologic Information: The mitigation site is seasonally wet under current grade and site conditions. The established wetland will receive inflows of water from seasonal high ground water, precipitation, and over flow surface water during storm events.

Talbot County Precipitation Data

Yearly Precipitation rain fall
45.9 inches
Yearly Precipitation snow fall
Totals
45.9 inches
60.1 inches

Precipitation based on 30 year averages. National Oceanic and Atmospheric Administration: Maryland office of Climatology

Substrate and Soil Conditions: Soil classification – Othello soils are deep nearly level poorly drained and formed from marine sediments. They have mottled subsoil, which indicates a seasonal high water table or poor aeration. The Othello soils are well suited to hardwoods that tolerate seasonal high water tables and pines which occur or slightly higher areas on a site.

The wetland mitigation project site has been in crop production and pasture for several years. There is an established mixture bean stubble and grass on the site that has been mowed for several years.

Planting List: Seedlings – 100, Swamp White Oak, *Quercus bicolor*; 100, Persimmon, *Diospyros virginiana*; 200, Southern Bald Cypress, *Taxodium distichum*; and 100, Green ash; *Fraxinus pennsylvanica*

Planting Schedule: Plantings are to be conducted in the spring of 2008, beginning as early as March 1st not later than May 15th. Plantings will be scheduled in accordance with availability of planting stock form the nursery and planting labor.

Fertilizer Requirements: The recommended plants will not required supplemental fertilization.

Monitoring Schedule: Survival and compliance inspections will be conducted according to Maryland Department of the Environment (MDE) Monitoring Protocol*. Initial planting survival inspections are to be completed six months after planting and reported to the landowners to ensure replanting if required during the next planting season. Planting stock survival must exceed 90% of planted trees and shrubs after the first growing season. Native indigenous plants are expected to colonize the site and will be managed for adequate stocking levels as per individual species requirements.

**The permittee will be responsible for submitting annual monitoring reports to the Nontidal Wetlands and Waterways Division, for a period of five (5) consecutive years from the completion of the construction of the mitigation site. Annual monitoring reports are submitted to the regulatory agencies by December 31 of that calendar year. The following information should be included with the annual monitoring report.

- 1. A narrative description of the mitigation site addressing its position in the landscape and adjacent land use.
- 2. A narrative description of how the mitigation site has achieved the goals, objectives and project standards established for the project.
- 3. A listing of the plant species occurring at the mitigation site. List most dominant to the least dominant species.
- 4. One set of photographs of the mitigation site taken any time during the months of May through September of each monitoring year. Every attempt should be made to provide a panoramic view of the site.
- Where <u>Phragmites australis</u> becomes a problem, it may be necessary to undertake eradication measures. If eradication is warranted, the premittee should submit a plan to the regulatory agency detailing the method to be used.
- 6. Groundwater monitoring wells may be required as part of the monitoring plan. Water levels within each well should be measured, at minimum, on a bi-monthly basis during the months of March through May and monthly from June through October. List these data (i.e., water levels and date measured) in the monitoring report.
- A description of any modifications which have been made or need to be made to implement the mitigation plan so as to the meet the project standards.

The first annual monitoring report should be submitted the Nontidal Wetlands and Waterways Division by the end of the year in which the mitigation planting occurs, unless the planting occurs after April 15, in which case the first monitoring report will not be due until the end of the next year. The reason for this is to allow the plants at least one full growing season before evaluating their success of failure."

Proposed Budget: The equipment and construction labor will all be contracted by the landowner. The contactor will provide planting labor and herbicide applications for the initial planting. Plant materials will be purchased through the Department of Natural Resources.

Seedling planting stock: 500 trees	265.00
Planting labor trees and shrubs and herbaceous plants:	140.00
Herbicide application	65.00
Tree Shelters for 100 selected hardwoods	350.00
TOTAL ESTIMATED COST	\$ 820.00

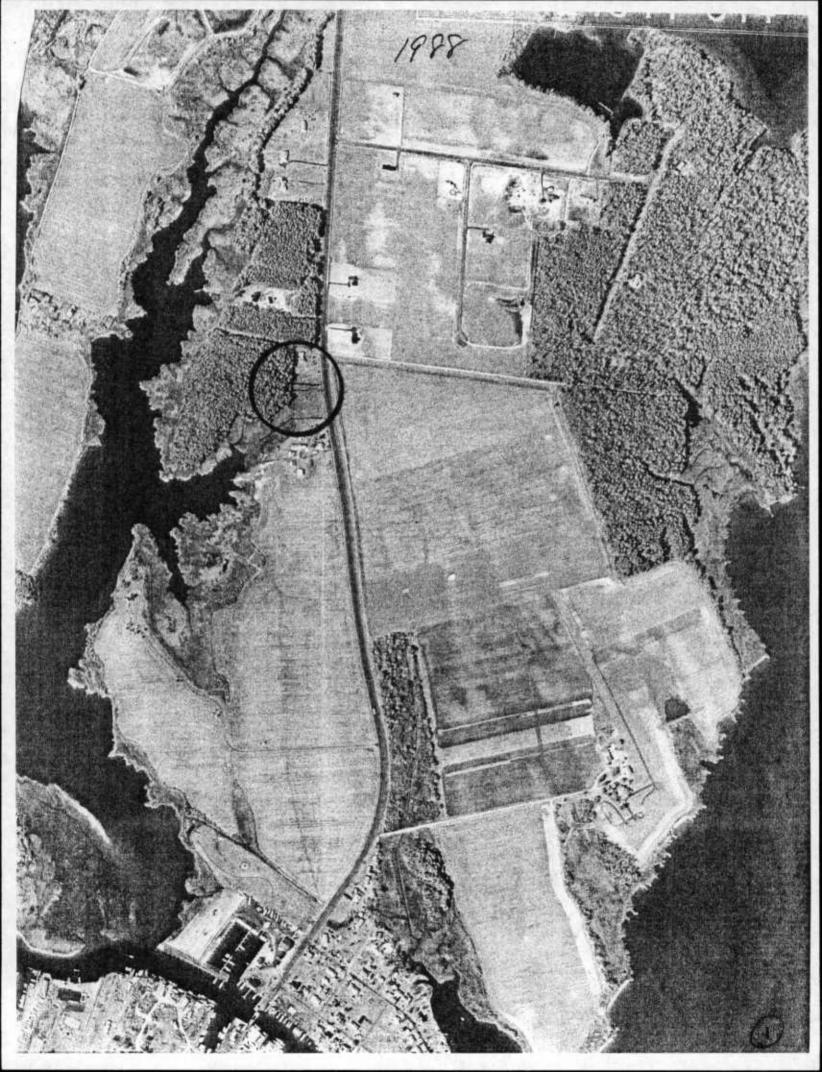
Protective Mechanisms: A Declaration of Restrictive Coven	ante ie to bo
recorded in the land records of Talbot County. Existing tidal and	anto io to pe
wetlands on the site are to be protected from further impacts as	nor the Critical
Areas regulations and MDE requirements.	per the Chilical
Date Recorded	

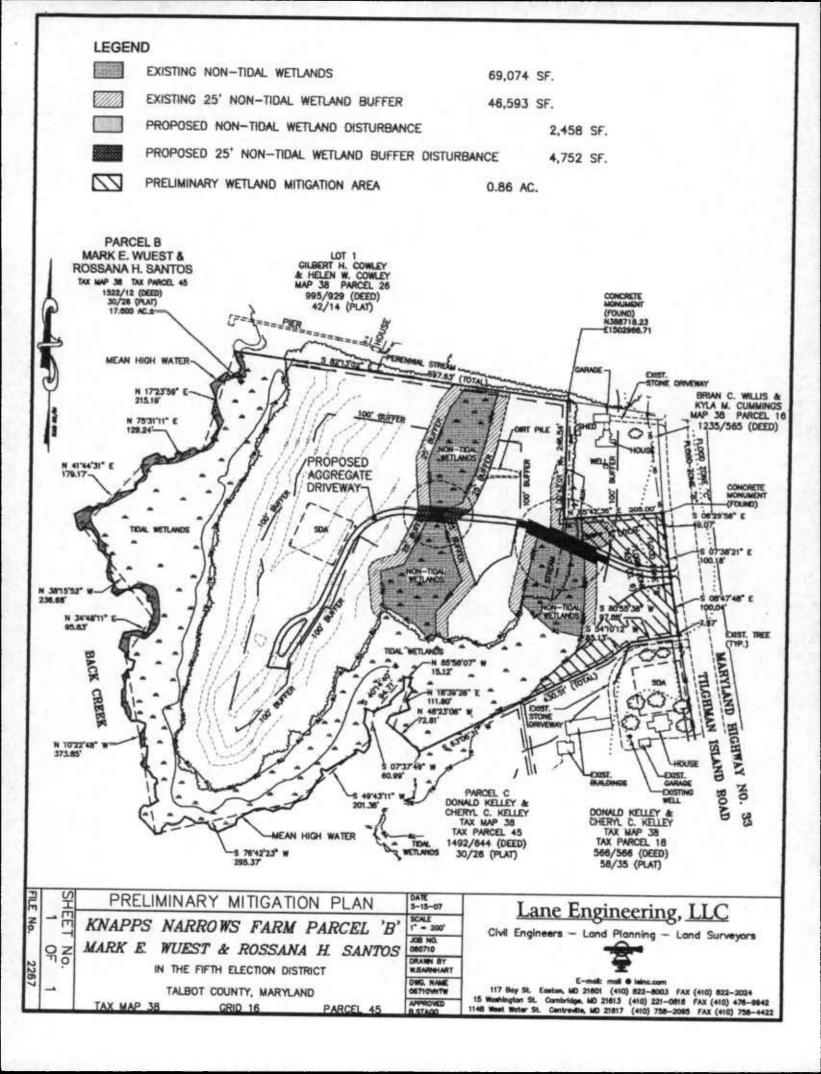
Documentation: Evidence of legal right to implement the proposed mitigation plan on the selected site.

- 1. Maryland Department of Assessment and Taxation record
- 2. Deed Plat reference 1281/976

Attachments:

- 1. 1988 aerial photo of site
- 2. Sheet 1 of 1 Preliminary Mitigation Plan, Lane Engineering LLC
- 3. Photos of Mitigation Site 10/16/07
- 4. Heritage Letter November 6, 2006
- 5. Letter of Authorization State of Maryland
- 6. Afforestation and Buffer Planting Proposal







NON TIDAL WETLAND & CRITICAL AREAS
MITIGATION SITE





Robert L. Ehriich, Jr., Governor Michael S. Steele, Lt. Governor C. Ronald Franks, Secretary

November 7, 2006

Mr. William B. Stagg Lane Engineering, Inc. P.O. Box 1767 117 Bay Street Easton, MD 21601

RE: Environmental Review for Lands of Robert Nicholas, north of Tilghman Island, Talbot County, Maryland.

Dear Mr. Stagg:

The Wildlife and Heritage Service has determined that there are no State or Federal records for rare, threatened or endangered species within the boundaries of the project site as delineated. As a result, we have no specific comments or requirements pertaining to protection measures at this time. This statement should not be interpreted however as meaning that rare, threatened or endangered species are not in fact present. If appropriate habitat is available, certain species could be present without documentation because adequate surveys have not been conducted.

Thank you for allowing us the opportunity to review this project. If you should have any further questions regarding this information, please contact me at (410) 260-8573.

Sincerely,

Lori A. Byrne,

Environmental Review Coordinator Wildlife and Heritage Service

MD Dept. of Natural Resources

ER #2006.2473.ta

Prepared By: M. Stark McLaughlin Environmental Planner- Forester Lane Engineering, Inc 117 Bay Street Easton, MD 21601 410-822-8003

October 22, 2007

AFFORESTATION And BUFFER PLANTING PROPOSAL FOR

Knapps Narrows Farm Cherie Santos-West 730 Third Avenue, New York, NY 10017-3206

LOCATION: MD RT 33 at Tilghman Island, Knapps Narrows Farm Lot B, Tax Map 38

Parcel 21

OBJECTIVE: The establishment of a forested nontidal wetland mitigation area and Critical Areas trees replacement mitigation for the proposed tree removals on the site. The planting site is open ground that was previously in agricultural production.

PLANTING AREA: 1.03 acres

Afforestation square feet: 44,948

PLANTING CRITERIA: Plantings should occur between March 1 and May 15 or September 15 to December 31. Seedlings will require some form or weed control, herbicides and or mowing for the initial growing season. Hardwood seedling may require protection devices or fencing. Larger trees may be staked, or guy wired as needed according to individual site conditions. Mulching, watering and fertilizing may be needed for larger trees

PLANTING METHODS: Seedlings can be machine planted, 8 X 10 to 10 x 10 foot spacing. Larger trees and plants must be planted or transplanted utilizing current and standard nursery practices.

RECOMMENDED TREE AND SHRUB SPECIES*: Seedlings – Swamp White Oak, *Quercus bicolor;* Persimmon, *Diospyros virginiana;* Southern Bald Cypress, *Taxodium distichum;* and Green ash; *Fraxinus pennsylvanica*

Reasonable substitution of recommended plant materials can be made based on availability and cost. Any major changes to the plant materials list will require approval of the Planning Office and documentation by DNR or the landscape contractor. Seedling stock for plantings may be obtained through the Maryland State Forest Tree Nursery located in Preston, Maryland. Phone 410-673-2467. Seedlings acquired from the State are subject to the following conditions and regulations.

In accordance with Natural Resources Code 5-408 and Regulation 08.07.03 which authorizes the sale of

purchased shall be planted in the State of Maryland for conservation purposes, 2) That a planting report be tree seedlings, the landowner agrees to the following: 1) That all seedlings, cuttings and shrubs so furnished when requested by the Department of Natural Resources, 3) That the planting be protected as far as possible from fire, grazing and trespass, 4) That trees may not be offered for sale with roots attached for removal from the land as live or ornamental trees.

Seedlings may also be acquired from any private source or nursery if desired.

<u>SITE PREPARATION</u>: The site is open ground that has been in crop production. The area may need to be mowed, plowed and disked for planting.

<u>WEED CONTROL</u>: Post planting weed and grass control is recommended to allow the seedlings to develop and set roots free from competition. The initial control could be through the application of the grass herbicide "OUST" (2 ounces per acre) following the planting. This application is at ground level, applied over the top of the planted the seedlings. Additional weed control will (may) involve mowing and spot applications of "ROUNDUP". If the has a history of noxious weeds and their control is required, Johnson grass and thistle must be controlled by Maryland State Law and not allowed to go to seed.

ESTABLISHMENT COSTS (ESTIMATE): Seedlings - \$ 265.00, planting labor - \$ 140.00, herbicide application \$65.00, 100 tree shelters for hardwoods installed \$350.00 Total = \$820.00

Costs are estimates only, actual cost of materials and labor may vary. The actual planting cost will be determined by the cooperating agency, DNR Forest Service or the landscape contractor.

LONGTERM MAINTENANCE: The planting site will require little long term maintenance. Trees shelters used to protect hardwood seedlings should be removed in the fifth growing season. Native natural invasive species should be encouraged and allowed to develop within the planting site. Non-native species and woody shrubs such as Multiflora rose and bittersweet should be controlled or eliminated from the stand.

BUFFER MANAGEMENT: The Chesapeake Bay Critical Areas Law requires that a minimum of 100 – foot vegetated buffer strip land landward from the mean high water line of tidal waters, tributary streams and tidal wetlands be established or existing vegetative buffers be maintained. Guidelines for Buffer establishment and maintenance suggest a layered Buffer, 3 tiered layers of vegetation, high canopy; midlevel understory plants and a ground cover provide the most effective Buffer.

"BUFFER" – an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shore line and terrestrial environments from made disturbances.

^{*} All plantings must contain a minimum of 80% plants native to the County or approved by the Planning Office. Trees are selected for specific site requirements and to match existing natural native vegetation when possible.

Forestry practices within the 100 buffer are restricted. No forestry practice is permitted within the first 50-foot strip except the following:

- (a) Cutting of trees or removal of natural vegetation may be permitted where necessary to provide access to private piers or to install or construct a shore erosion protection device or measure or a water dependent facility, providing the device, measure, or facility has received all necessary state and federal permits.
- (b) Individual trees may be cut for personal use providing that this cutting does not impair the water quality or existing habitat value or other function of the buffer and provided that the trees are replaced on an equal basis for each tree cut.
- (c) Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures, or are in danger of falling and therefore causing the blockage of streams, resulting in accelerated shore erosion.
- (d) Horticultural practices* may be used to maintain the health of individual trees.
- (e) Other cutting techniques may be undertaken, if necessary, to preserve the forest from extensive pest or disease infestation or threat from fire. Advice and guidance must be obtained from the Department of Agriculture and or the Department of Natural Resources.

The removal of any live trees form the Buffer is restricted to the conditions above and under the County's Critical Areas regulations require reforestation or mitigation for any tree removals.

* Horticultural practices may be defined as those practices which promote the health, form, structure or appearance of the tree. Trees generally benefit from release of competition, removal of dead or damaged branches, and selective pruning. Release from competition can entail removal of vines and other woody vegetation in or under the tree selected for release. Removal of dead wood and storm damaged limbs is necessary both for the health of the tree and for reasons of safety. Pruning is the primary horticultural practice used for the maintenance of the health and appearance of the tree. Pruning can be done to train and shape young trees, control plant size, influence flowering and fruiting, compensate for root loss and invigoration of stagnating plants,

Crown cleaning, Crown thinning/reduction and Crown raisings are all acceptable pruning operations that can be conducted with the Buffer. Crown raising is the practice of removing lower branches of a tree to provide clearance, increase the length of the bole of the tree and increase light infiltration to the forest floor or understory. Crown raising is conducted from the ground up using pole saws and loppers for smaller branches. Pruning of hardwoods trees should generally not exceed one third of the total height of the trees being pruned. Pines can be pruned to two thirds of the total height or more depending on species.

FIELD PLANTING OF PINE and HARDWOOD SEEDLINGS

Tree seedlings can be successfully established on most open field sites with a minimal amount of effort. The key requirement for a successful planting is adequate control of competing vegetation and proper handling of the planting stock. Competition from established perennial grasses such as tall fescue, rye grass or lespedeza must be controlled. If the area has not been under cultivation in recent years the site must be deep plowed and disked. The application of a herbicide such as Round-up, or Oust will create the most suitable conditions for planted seedlings. The selection and recommendation of a specific herbicide will depend on the current site conditions.

Hardwood seedlings benefit from the use of Tree Shelters or protective tree seedling tubes. Research has shown the shelters provide for increased growth and development of hardwood seedlings and afford protection from deer and rabbit brows.

Plantings can begin as early as March but should not extend past May 15th because of the possible losses due to summer droughts. Poor initial planting survival usually results from improper planting, improper handling of the seedlings in storage or transportation or excessive competition from weeds.

Recommended spacing between trees will depend on the planting objectives, a good all purpose spacing is 8×10 feet. A planting of eight feet between trees and rows of trees will allow for the planting of just under 700 trees per acre.

Post planting maintenance usually consists only of protection of the seedlings from fire during the first 2-3 years. Mowing and reduction of weed and grass competition can dramatically improve growth. In most cases some terminal leader damage can be anticipated on pine seedlings from the Nantucket Pine Tip Moth. The trees will eventually outgrow these problems and develop new leaders and full crowns.

STATE OF MARYLAND

DEPARTMENT OF THE ENVIRONMENT WATER MANAGEMENT ADMINISTRATION

LETTER OF AUTHORIZATION

AUTHORIZATION NUMBER: 200762534/07-NT-2096

EFFECTIVE DATE:

September 20, 2007

EXPIRATION DATE:

September 20, 2010

AUTHORIZED PERSON:

Mark Wuest and Rosanna Santos

145 Everit Street

New Haven, Connecticut 06511



IN ACCORDANCE WITH ENVIRONMENT ARTICLE §5-503(A) AND §5-906(A), ANNOTATED CODE OF MARYLAND (1996 REPLACEMENT VOLUME), COMAR 26.17.04 AND 26.23.01, AND THE ATTACHED GENERAL AND SPECIFIC CONDITIONS, Mark Wuest and Rosanna Santos ("PERMITTEE"), IS HEREBY AUTHORIZED BY THE WATER MANAGEMENT ADMINISTRATION ("ADMINISTRATION") TO CONDUCT A REGULATED ACTIVITY IN A NONTIDAL WETLAND, BUFFER, OR EXPANDED BUFFER, AND/OR TO CHANGE THE COURSE, CURRENT OR CROSS-SECTION OF WATERS OF THE STATE, IN ACCORDANCE WITH THE ATTACHED PLANS APPROVED BY THE DIVISION ON September 13, 2007 ("APPROVED PLAN") AND PREPARED BY Lane Engineering, Inc. AND INCORPORATED HEREIN, AS DESCRIBED BELOW:

Installation of two culverts, 12 inches in diameter and 30 feet long, in a stream, and grading and placement of fill for the construction of driveway (10 feet wide top-width, 23 feet wide bottom-width) to access an upland building site will result in permanent impacts to 30 linear feet of stream, 2,458 square feet of forested nontidal wetland, and 4,752 square feet of forested nontidal wetland buffer. The activity for this project is located within the Chesapeake Critical Areas; mandatory mitigation for wetlands losses shall be fulfilled by creating at least 4,916 square feet of forested nontidal wetland on the Permittee's property. This project is located on the west side of Tilghman Island Road (MD Route 33), 0.2 mile west of the junction of Benders Lane and Tilghman Island Road, 2.1 miles south of Sherwood, Talbot County, Maryland. NOTE THE TIME-OF-YEAR RESTRICTION FOR INSTREAM WORK (CONDITION 16) AND MITIGATION REQUIREMENT (CONDITION 21). A DECLARATION OF RESTRICTIVE COVENANTS PROHIBITING ANY FUTURE NONTIDAL WETLANDS IMPACTS HAS BEEN RECORDED AMONG THE LAND RECORDS OF TALBOT COUNTY AT LIBER 1568 FOLIO 325.

Amanda L. Sigillito

Division Chief

Nontidal Wetlands & Waterways Division

cc: David Pushkar - WMA Compliance Program w/file Elisa Deflaux - Talbot County Planning and Zoning Bill Stagg - Lane Engineering, Inc.
Nick Kelly - Critical Areas Commission

AUTHORIZATION NUMBER: 200762534/07-NT-2096

THE FOLLOWING CONDITIONS OF AUTHORIZATION APPLY TO ALL ACTIVITIES AUTHORIZED BY AUTHORIZATION NUMBER 200762534/07-NT-2096:

- 1. <u>Validity</u>: Authorization is valid only for use by Authorized Person. Authorization may be transferred only with prior written approval of the Administration. In the event of transfer, transferee agrees to comply with all terms and conditions of Authorization.
- 2. <u>Initiation of Work, Modifications and Extension of Term</u>: Authorized Person shall initiate authorized activities with two (2) years of the Effective Date of this Authorization or the Authorization shall expire. Authorized Person may submit written requests to the Administration for (a) extension of the period for initiation of work, (b) modification of Authorization, including the Approved Plan, or, (c) not later than 45 days prior to Expiration Date, an extension of the term. Requests for modification shall be in accordance with applicable regulations and shall state reasons for changes, and shall indicate the impacts on nontidal wetlands, streams, and the floodplain, as applicable. The Administration may grant a request at its sole discretion.
- Responsibility and Compliance: Authorized Person is fully responsible for all work performed and activities authorized by this Authorization shall be performed in compliance with this Authorization and Approved Plan. Authorized Person agrees that a copy of the Authorization and Approved Plan shall be kept at the construction site and provided to its employees, agents and contractors. A person (including Authorized Person, its employees, agents or contractors) who violates or fails to comply with the terms and conditions of this Authorization, Approved Plan or an administrative order may be subject to penalties in accordance with §5-514 and §5-911, Department of the Environment Article, Annotated Code of Maryland (1990 Replacement Volume).
- 4. Failure to Comply: If Authorized Person, its employees, agents or contractors fail to comply with this Authorization or Approved Plan, the Administration may, in its discretion, issue an administrative order requiring Authorized Person, its employees, agents and contractors to cease and desist any activities which violate this Authorization, or the Administration may take any other enforcement action available to it by law, including filing civil or criminal charges.
- Suspension or Revocation: Authorization may be suspended or revoked by the Administration, after notice of opportunity for a hearing, if Authorized Person: (a) submits false or inaccurate information in Permit application or subsequently required submittals; (b) deviates from the Approved Plan, specifications, terms and conditions; (c) violates, or is about to violate terms and conditions of this Authorization; (d) violates, or is about to violate, any regulation promulgated pursuant to Title 5, Department of the Environment Article, Annotated Code of Maryland as amended; (e) fails to allow authorized representatives of the Administration to enter the site of authorized activities at any reasonable time to conduct inspections and evaluations; (f) fails to comply with the requirements of an administrative action or order issued by the Administration; or (g) does not have vested rights under this Authorization and new information, changes in site conditions, or amended regulatory requirements necessitate revocation or suspension.

- Other Approvals: Authorization does not authorize any injury to private property, any invasion of rights, or any infringement of federal, State or local laws or regulations, nor does it obviate the need to obtain required authorizations or approvals from other State, federal or local agencies as required by law.
- Site Access: Authorized Person shall allow authorized representatives of the Administration access to the site of authorized activities during normal business hours to conduct inspections and evaluations necessary to assure compliance with this Authorization. Authorized Person shall provide necessary assistance to effectively and safely conduct such inspections and evaluations.
- 8. <u>Inspection Notification</u>: Authorized Person shall notify the Administration's Compliance Program at least five (5) days before starting authorized activities and five (5) days after completion. For Frederick, Washington, Allegany and Garrett counties, Authorized Person shall call (301) 689-8494. For all other counties, call the Baltimore office at (410) 631-3510.
- 9. Sediment Control: Authorized Person shall obtain approval from the Talbot County Soil Conservation District for a grading and sediment control plan specifying soil erosion control measures. The approved grading and sediment control plan shall be included in the Approved Plan, and shall be available at the construction site.

10. Federally Mandated State Authorizations:

Water Quality Certification: Water quality certification is issued under authority of Section 401 of the Federal Water Pollution Control Act and its Amendments and the Environment Article, Sections 9-313 - 9-323, inclusive, Annotated Code of Maryland.

- X Coastal Zone Consistency: This Authorization constitutes official notification that authorized activities are consistent with the Maryland Coastal Zone Management Program, as required by Section 307 of the Federal Coastal Zone Management Act of 1972, as amended. Activities within the following counties are not subject to this requirement: Allegany, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington.
- 11. <u>Best Management Practices During Construction</u>: Authorized Person, its employees, agents and contractors shall conduct authorized activities in a manner consistent with the Best Management Practices specified by the Administration.
- 12. <u>Disposal of Excess</u>: Unless otherwise shown on the Approved Plan, all excess fill, spoil material, debris, and construction material shall be disposed of outside of nontidal wetlands, nontidal wetlands buffers, and the 100-year floodplain, and in a location and manner which does not adversely impact surface or subsurface water flow into or out of nontidal wetlands.
- 13. <u>Temporary Staging Areas:</u> Temporary construction trailers or structures, staging areas and stockpiles shall not be located within nontidal wetlands, nontidal wetlands buffers, or the 100-year floodplain unless specifically included on the Approved Plan.

- 14. Temporary Stream Access Crossings: Temporary stream access crossings shall not be constructed or utilized unless shown on the Approved Plan. If temporary stream access crossings are determined necessary prior to initiation of work or at any time during construction, Authorized Person, its employees, agents or contractors shall submit a written request to the Administration and secure the necessary permits or approvals for such crossings before installation of the crossings. Temporary stream access crossings shall be removed and the disturbance stabilized prior to completion of authorized activity or within one (1) year of installation.
- 15. <u>Discharge:</u> Runoff or accumulated water containing sediment or other suspended materials shall not be discharged into waters of the State unless treated by an approved sediment control device or structure.
- 16. <u>Instream Construction Prohibition</u>: To protect important aquatic species, motor driven construction equipment shall not be allowed within stream channels unless on authorized ford crossings. Activities within stream channels are prohibited as determined by the classification of the stream (COMAR 26.08.02.08): <u>unnamed tributary to Back Creek</u> is a Use I waterway; instream work may not be conducted during the period <u>March 1 through June 15</u>, inclusive, of any year.
- 17. **Instream Blasting:** Authorized Person shall obtain prior written approval from the Administration before blasting or using explosives in the stream channel.
- 18. <u>Minimum Disturbance</u>: Any disturbance of stream banks, channel bottom, wetlands, and wetlands buffer authorized by Permit or Approved Plan shall be the minimum necessary to conduct permitted activities. All disturbed areas shall be stabilized vegetatively no later than seven (7) days after construction is completed or in accordance with the approved grading or sediment and erosion control plan.
- 19. Restoration of Construction Site: Authorized Person shall restore the construction site upon completion of authorized activities. Undercutting, meandering or degradation of the stream banks or channel bottom, any deposition of sediment or other materials, and any alteration of wetland vegetation, soils, or hydrology, resulting directly or indirectly from construction or authorized activities, shall be corrected by Authorized Person as directed by the Administration.
- 20. **Drainage**: Permittee shall ensure that existing drainage patterns remain unaltered. Existing flow, into and out of the wetland, shall be retained and no impediment to drainage may be created that would pose a potential flooding hazard.
- 21. Nontidal Wetlands Mitigation: Permittee shall mitigate for 2,458 square feet of forested nontidal wetland impacts by creating at least 4,916 square feet of forested nontidal wetland on the Permittee's property where nontidal wetland impacts are approved by this Authorization. Permittee shall provide a Phase II mitigation plan to the Administration no later than 90 days from the Effective Date of this Authorization.

This Letter of Authorization is granted subject to the following:

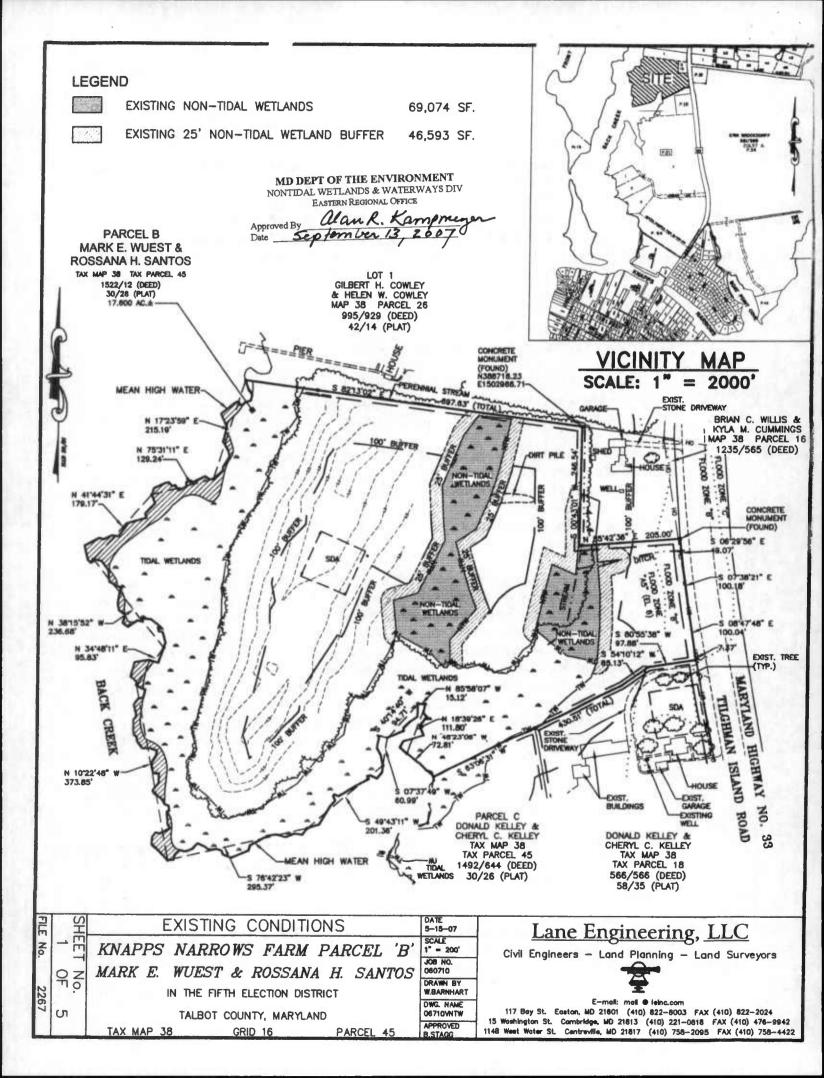
SPECIFIC NONTIDAL WETLANDS BEST MANAGEMENT PRACTICES

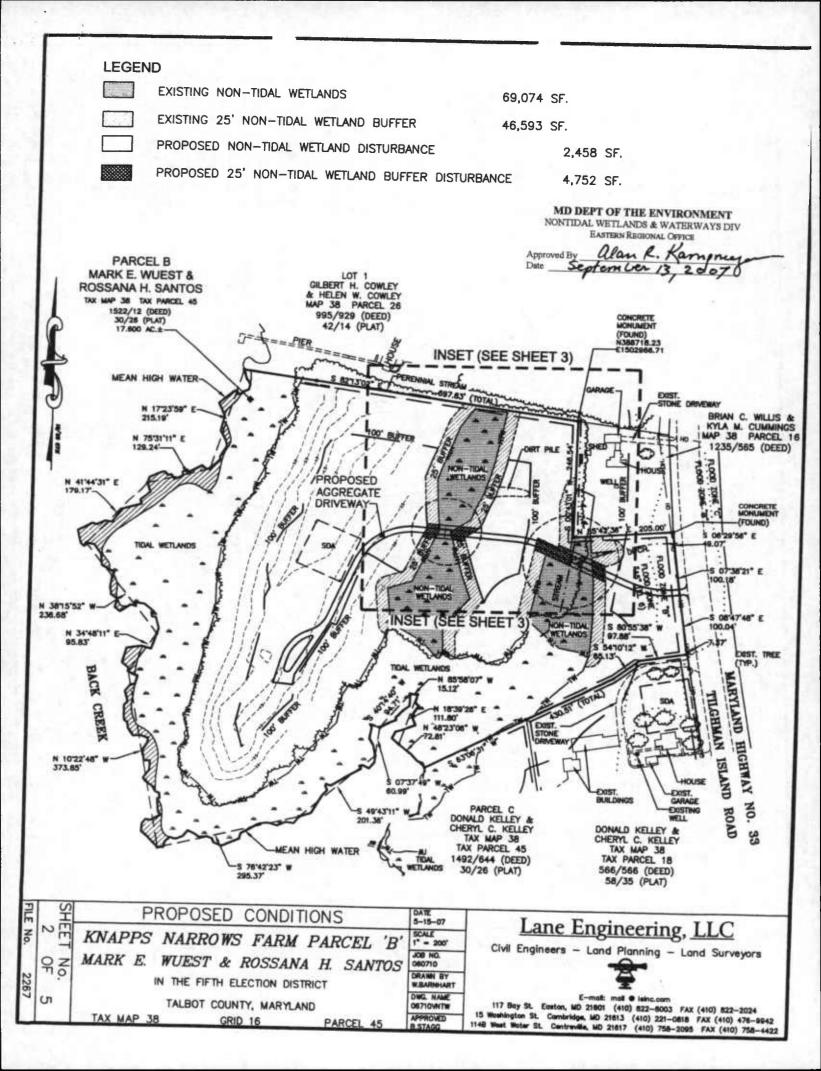
The following practices are part of the engineering design plans, entitled, EXISTING CONDITIONS KNAPPS NARROWS FARM PARCEL "B" MARK E. WUEST & ROSSANA H. SANTOS, PROPOSED CONDITIONS KNAPPS NARROWS FARM PARCEL "B" MARK E. WUEST & ROSSANA H. SANTOS, PROPOSED CONDITIONS (INSET) KNAPPS NARROWS FARM PARCEL "B" MARK E. WUEST & ROSSANA H. SANTOS, and DRIVEWAY CROSS SECTIONS KNAPPS NARROWS FARM PARCEL "B" MARK E. WUEST & ROSSANA H. SANTOS, SHEET No. 1 OF 5 through SHEET No. 4 OF 5, inclusive, under the heading of "Conditions and Best Management Practices", and must be followed:

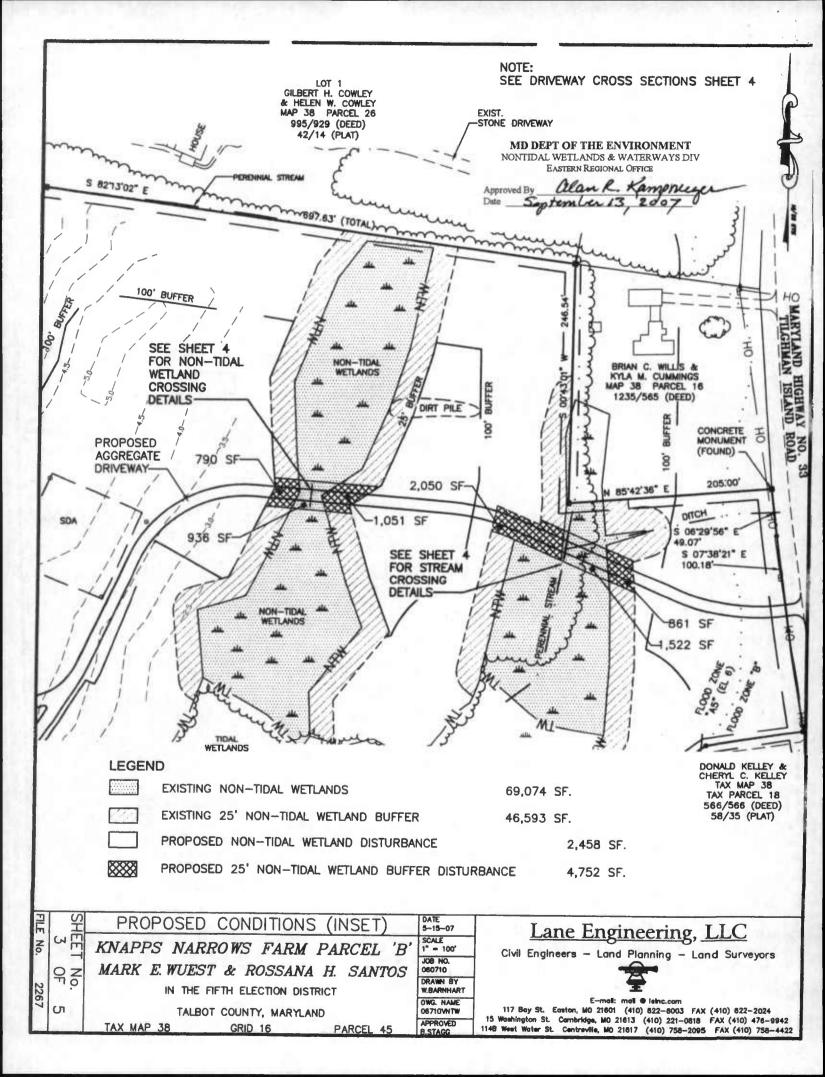
- a) Strip, stockpile and maintain separately the top 6" of soil material from the wetland, to be replaced as the top layer of any backfilled material;
- b) Place materials in a location and manner which does not adversely impact surface or subsurface water flow into or out of the nontidal wetland and does not impede the existing drainage pattern or create a flooding hazard for adjacent properties;
- c) Use previously excavated material as backfill, unless it contains waste metal products, unsightly debris, toxic material or any other deleterious substance. Use clean borrow material when excavated material is not suitable for use as backfill;
- d) Place heavy equipment on mats or suitably design the equipment to prevent damage to the nontidal wetlands;
- Rectify any nontidal wetlands temporarily impacted by any proposed repair and maintenance activity or installation of the utility line. All temporary fills shall be removed in their entirety on or before the completion of construction, and annual vegetation must be used when any vegetative stabilization is performed. All stabilization in the wetland and buffer shall be of the following recommended species: Annual Ryegrass (Lolium multiflorum), Millet (Setaria italica), Barley (Hordeum sp.), Oats (Uniola sp.), and/or Rye (Secale cereale). These species will allow for the stabilization of the site while also allowing for the voluntary revegetation of natural wetland species. Other non-persistent vegetation may be acceptable, but must be approved by the Division. Kentucky 31 fescue shall not be utilized in the wetland or buffer areas. The area should be seeded and mulched to reduce erosion after construction activities have been completed;
- f) Repair and maintain any serviceable structure or fill so there is no permanent loss of nontidal wetlands in excess of nontidal wetlands lost under the original structure or fill, and
- g) After installation has been complete, make post construction grades and elevations of nontidal wetlands the same as the original grades and elevations. All backfill must be performed with material excavated from the site with the exception of riprap to be placed for the purposes of sediment and erosion control.

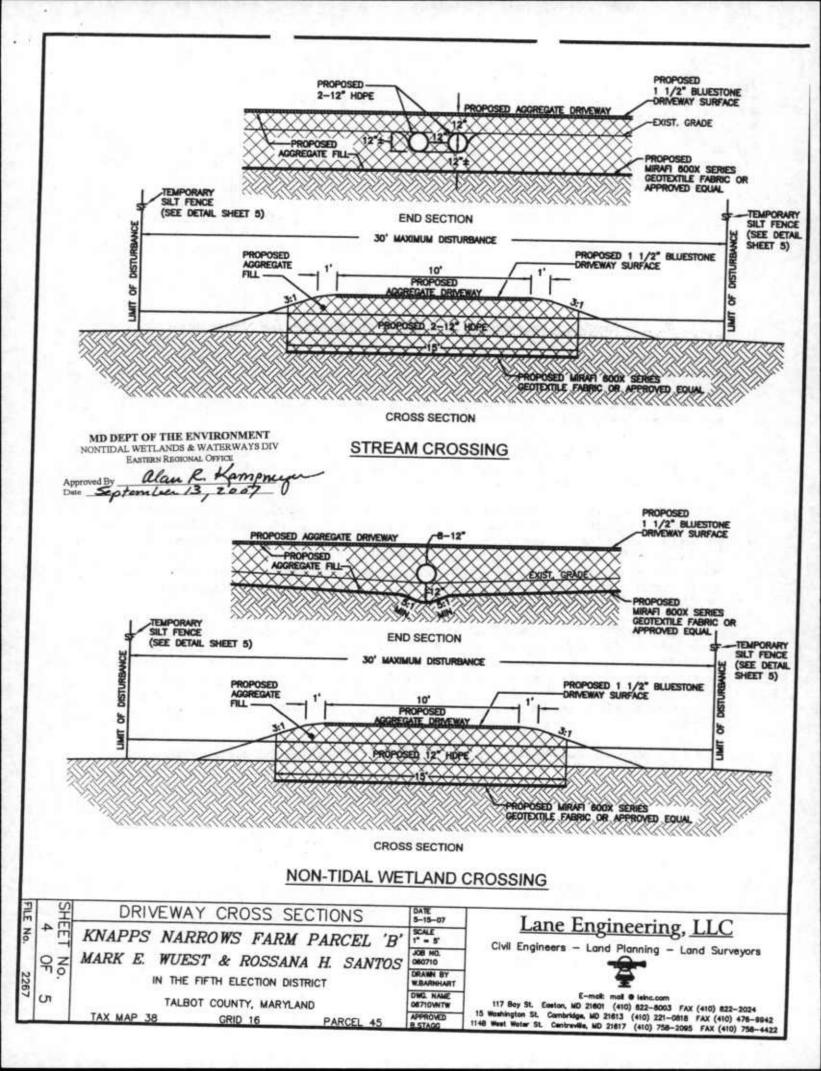
U.S. ARMY CORPS OF ENGINEERS AUTHORIZATION

This project has received authorization as a Category I-d activity from the U.S. Army Corps of Engineers through the Maryland State Programmatic General Permit (MDSPGP), as attached.













BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
P.O. BOX 1715
BALTIMORE, MD 21203-1715

IMPORTANT INFORMATION ABOUT YOUR PROJECT

Corps Permit Tracking No.	: 200762534	Date: September 20, 2007

Permittee/Project Name: Mark Wuest & Rossana Santos / road crossing MDSPGP-3 Category/ Activity No.: I-d

Dear Applicant:

The U. S. Army Corps of Engineers, Baltimore District, has determined that the proposed work meets the terms and conditions of the Maryland State Programmatic General Permit-3 (MDSPGP-3), provided the work is completed in compliance with the plan(s) (enclosed), the standard MDSPGP-3 conditions (enclosed), the applicable MDSPGP-3 activity-specific conditions (enclosed), and special conditions (enclosed, if applicable). This MDSPGP-3 verification is provided pursuant to Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act. If any of the information contained in your application and/or plans is later found to be in error, the MDSPGP-3 authorization for your project may be modified, suspended, or revoked.

As a condition of the MDSPGP-3 authorization, you, the permittee, are required to complete and sign the enclosed Compliance Self-Certification Form regarding the completed work and any required mitigation, and return to the above address within 60 days following completion of the authorized work and any required mitigation.

In addition, please note, if you sell the property associated with this permit, when the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new property owner(s). Although the construction period for work authorized by this MDSPGP-3 is finite, the permit itself, with its limitations, does not expire. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, you must have the transferee (new owner) provide a mailing address and telephone number along with their signature and date in the space provided below, and mail a copy to the above address.

Your MDSPGP-3 authorization is valid until September 30, 2011 unless the MDSPGP-3 is modified, reissued, or revoked. You must remain informed of the changes to the MDSPGP-3. When changes to the MDSPGP-3 occur, a public notice announcing the changes will be issued. If you have commenced construction or are under contract to commence construction of this authorized work prior to the expiration, modification, or revocation date of the MDSPGP-3 itself, you have 12 months from the effective date of the MDSPGP-3's expiration, modification or revocation to complete the work under the present terms and conditions of this MDSPGP-3.

In order for this authorization to be valid, you must obtain all required Federal, State, and local permits.

Vance Hobbs

Acting Chief, Regulatory Branch

TRANSFEREE SIGNATURE	DATE	AREA CODE / TELEPHONE NO.
PRINTED NAME	ADDRESS	
•		



DEPARTMENT OF THE ARMY BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS P.O. BOX 1715 BALTIMORE, MD 21203-1715

Effective October 1, 2006

200762534/07-NT-2096 Corps Permit Number

CENAB-OP-R-MDSPGP-3 (MARYLAND STATE PROGRAMMATIC GENERAL PERMIT-3)

TO WHOM IT MAY CONCERN:

Upon the recommendation of the Chief of Engineers, and under the provisions of Section 404 of the Clean Water Act, as amended, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Secretary of the Army hereby authorizes the discharge of dredged or fill material or the placement of structures into Waters of the United States, including wetlands and navigable waters. These discharges and structures must comply with all the terms and conditions identified in this MDSPGP-3. It has been determined that the project qualifies for the MDSPGP-3. Accordingly, you are authorized to undertake the activity pursuant to:

- 1. Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403); and/or
- 2. Section 404 of the Clean Water Act (33 U.S.C. 1344).

You are authorized to perform work in accordance with the terms and conditions specified in Section VI of the MDSPGP-3 effective on October 1, 2006.

VI. General Conditions: To qualify for MDSPGP-3 authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any activity-specific conditions in the MDSPGP-3 category list and any case-specific special conditions imposed by the Corps.

A. General Requirements:

- 1. Other Permits: Authorization under the MDSPGP-3 does not obviate the need to obtain other Federal, State, or local authorizations required by law.
- 2. Applicability: Applicability of the MDSPGP-3 shall be reviewed with reference to the Corps definition of waters of the United States, including wetlands, and navigable waters of the United States. Applicants are responsible for delineating boundaries of all waters of the United States, including wetland boundaries. The delineation of wetland boundaries shall be accomplished in accordance with the current Federal manual for identifying jurisdictional wetlands and appropriate guidance issued by the Corps of Engineers.
- 3. Minimal Effects: Projects authorized by the MDSPGP-3 shall have no more than minimal individual and cumulative adverse environmental effects.
- 4. Discretionary Authority: Notwithstanding compliance with the terms and conditions of the MDSPGP-3, the Corps retains discretionary authority to require an alternate Corps permit review for any project under all categories of the MDSPGP-3 based on concerns for the aquatic environment or for any other factor of the public interest. This authority may be invoked on a case-by-case basis during the review process for Category III activities whenever the Corps determines that, based on the concerns stated above, the potential consequences of the proposed project warrant individual review. In some rare instances, the Corps may have concerns for the aquatic environment or for any other public interest factor pertaining to a specific proposed project, which has already received a case-specific verification as a Category I activity. In order to evaluate this project under an alternate Corps permit review, the verification must be suspended in accordance with Section VII.E of the MDSPGP-3.

Whenever the Corps notifies an applicant that an alternate Corps permit may be required, authorization under the MDSPGP-3 is voided. No work may be conducted until the individual Corps permit is obtained, or until the Corps notifies the applicant that further review has demonstrated that the work may proceed under the MDSPGP-3.

5. Single and Complete Projects: The MDSPGP-3 shall not be used for piecemeal work and shall be applied to single and complete projects, including maintenance activities. All components of a project, including all attendant features both temporary and permanent, shall be reviewed together as constituting one single and complete project. All planned

phases of multi-phased projects (e.g., subdivisions should include all work such as roads, utilities, and lot development) shall be applied for and reviewed together as constituting one single and complete project. The MDSPGP-3 shall not be used for any activity or portion of a project, e.g., a pier or boat ramp, that is part of, or dependent on, an overall project, e.g., the dredging of a main navigation channel or a spur channel, for which an individual permit or some other alternate Corps permit is required.

6. Use of Multiple MDSPGP-3 Category I Activities: More than one Category I activity may be used to authorize a single and complete project under the MDSPGP-3. However the project must meet the specific requirements of each Category I activity and the total extent of project impacts must not exceed the acreage limit of the Category I activity with the highest specified acreage limit (e.g., if armoring the toe of an existing culvert is constructed under Category I.b(2) with an associated nontidal bank stabilization authorized under Category I.f(1)., the maximum total impact limits to waters of the United States for the single and complete project may not exceed 1.0 acre (43,560 square feet).

7. Authorized Activities in Navigable Waters Subject to Section 10 of the Rivers and Harbors Act of 1899:

- a. If future operations by the United States require removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable water, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
- b. The U.S. Code of Federal Regulations, Title 33, Part 64 states that all structures erected in navigable waters in depths in excess of three feet at mean low water (MLW) require obstruction lights unless the applicant is advised to the contrary by the Coast Guard District Commander. If the structures authorized by this permit are to be built in water depths in excess of three feet at MLW, the permittee must contact the Commander (AOWW), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia, 23704, to ascertain the need for obstruction lights.

B. National Concern:

- 1. Historic Properties: Any activity authorized by the MDSPGP-3 shall comply with Section 106 of the National Historic Preservation Act. MDE, in cooperation with the Maryland Historic Preservation Office, shall conduct an initial review and notify the Corps if any archaeological or other cultural resources are in the vicinity of the project. The Corps may require applicants to perform a survey of archaeological and historical resources in the project area. The Corps shall determine if consultation under Section 106 with MHT or the Advisory Council on Historic Preservation is required. The applicant must notify the Corps if the activity may affect any historic properties listed or eligible for listing, or that the applicant has reason to believe may be eligible for listing on the National Register of Historic Places. If the permittee, during construction of work authorized herein, encounters a previously unidentified archaeological or other cultural resource within the permit area subject to DA jurisdiction that might be eligible for listing in the National Register of Historic Places, the permittee shall immediately stop work in the permit area and notify the District Engineer. The permittee shall not begin or continue work until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity may proceed. Information on the location and existence of historical resources can be obtained from the Maryland Historic Trust, Office of Preservation Services, and the National Register of Historic Places.
- 2. National Lands: Activities authorized by the MDSPGP-3 shall not impinge upon the value of any Federal land, including but not limited to, National Wildlife Refuges, National Forests, National Marine Sanctuaries or any area administered by the National Park Service (e.g., Assateague Island National Seashore).
- 3. Endangered Species: The MDSPGP-3 does not authorize any activity that may affect a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA); or which may destroy or adversely modify the critical habitat of such species unless and until appropriate coordination with the applicable resource agency(s) is complete and all such issues are resolved in accordance with the applicable regulations and the procedures outlined in the MDSPGP-3 Standard Operating Procedures. MDE, in cooperation with DNR, shall conduct an initial review and notify the Corps and FWS or NMFS if any Federally-listed species or critical habitat is likely to be in the vicinity of the project. The Corps shall determine if consultation with FWS or NMFS is required under Section 7 of the ESA. If consultation is required, the applicant, after notification, shall not begin or continue work until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is eligible for authorization. Information on the location of threatened and endangered species and their critical habitat can be obtained from the FWS and NMFS.

- 4. Essential Fish Habitat (EFH): Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act requires an EFH consultation with the NMFS for any action or proposed action authorized, funded, or undertaken by a Federal agency that may adversely affect EFH. EFH has been defined by Congress as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." The designation and conservation of EFH seeks to minimize adverse effects on habitat caused by fishing and non-fishing activities. NMFS has determined that many of the MDSPGP-3 Category I activities are eligible for EFH general or programmatic concurrence and require no further EFH consultation. NMFS, in consultation with the District, has determined that individual EFH consultation is needed for some projects potentially eligible for authorization under Category I (includes those projects requiring EFH screening process under Category II) and all Category III projects of the MDSPGP-3 that may adversely affect EFH. The Corps will coordinate with NMFS as part of the Category II and Category III review procedures. EFH conservation recommendations made by NMFS will normally be included as a permit requirement by the Corps. If the EFH coordination and consultation requirements can not be resolved under the MDSPGP-3 process, an alternate Corps permit review is required for the project.
- 5. Wild and Scenic Rivers: No activity is authorized under the MDSPGP-3 that occurs in a component of the National Wild and Scenic River System, including rivers officially designated by Congress as study rivers for possible inclusion in the system, while such rivers are in an official study status, unless the appropriate Federal agency, with direct management responsibility for the river, has determined in writing that the proposed activity will not adversely affect any National Wild and Scenic River, including study rivers. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U. S. Forest Service, Bureau of Land Management, or U. S. Fish and Wildlife Service.)

6. Federally Authorized Civil Works Projects:

- a. Federal Navigation Projects: The MDSPGP-3 does not authorize interference with any Federal navigation project. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration. (See VI.A.7.a. above)
- b. Other Federally Authorized Civil Work Projects (i.e., flood control, dams, and reservoirs): The MDSPGP-3 does not authorize interference with any proposed or existing Federally-authorized civil works project.
- 7. Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:
- a. Damages to the permitted project, or uses thereof, as a result of other permitted or unpermitted activities or from natural causes;
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
 - d. Design or construction deficiencies associated with the permitted work; and
- e. Damage claims associated with any future modification, suspension or revocation of the MDSPGP-3 or any specific MDSPGP-3 verification.
- 8. Navigation: Projects authorized under the MDSPGP-3 shall not cause interference with navigation, and no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to projects authorized under the MDSPGP-3. Nothing in the MDSPGP-3 shall in any way restrict the District Engineer, U. S. Army Engineer District, Baltimore, from exercising his legal authority to protect the public interest in navigation or from exercising his authority under the Navigation Servitude of the United States. (See VI.A.7.a. above)

C. Minimization of Environmental Impacts:

1. Minimization: Discharges of dredged or fill material into waters of the United States and adverse impacts of such discharges on the aquatic ecosystem shall be avoided and minimized to the maximum extent practicable on-site.

2. Mitigation:

- a. Generally, compensatory mitigation will be required for all permanent tidal or nontidal wetland impacts either through the State's tidal or nontidal wetland compensation fund or by the permittee as required by special condition of the MDSPGP-3 or the State authorization.
- b. Generally, compensatory mitigation will be required for all permanent impacts of 200 linear feet or greater to stream channels, rivers, and other open waters as appropriate under Federal guidance and to the extent necessary to ensure that the impacts are minimal. A proposed compensatory mitigation proposal may be submitted with the application to expedite the process. The Corps will determine if the project is eligible for authorization under the MDSPGP-3 subject to the applicant's submittal of a compensatory mitigation proposal for stream impacts. Compensatory mitigation plans for projects in or near streams or other open waters will generally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat impact concerns.
- 3. Work in Wetlands: Heavy equipment working in wetlands shall be avoided if possible and, if required, soil and vegetation disturbance shall be minimized by using techniques such as timber mats, geotextile fabric, and vehicles with low-pressure tires. Disturbed areas in wetlands shall be restored to preconstruction contours and elevations upon completion of the work.
- 4. Temporary Fill and Mats: Temporary fill and the use of mats are both considered a discharge of fill material and must be included in the quantification of impact area authorized by the MDSPGP-3. Temporary fill (e.g., access roads, cofferdams) in waters and wetlands authorized by the MDSPGP-3 shall be properly stabilized during use to prevent erosion. Temporary fill in wetlands shall be placed on geotextile fabric laid on the existing wetland grade. Upon completion of the work, all temporary fills shall be disposed of at an upland site, suitably contained to prevent erosion and transport to a waterway or wetland. Temporary fill areas shall be restored to their original, pre-construction contours and revegetated with native wetland species.
- 5. Erosion and Sediment Control: Adequate erosion and sediment control measures, practices and devices, such as vegetated filter strips, geotextile silt fences, phased construction, or other devices or methods, shall be used to reduce erosion and retain sediment on-site during and after construction. These devices and methods shall be capable of (a) preventing erosion, (b) collecting sediment and suspended and floating materials, and (c) filtering fine sediment. Erosion and sediment control devices shall be removed when the work is complete and the site has been successfully stabilized. The sediment collected by these devices shall be removed and placed at an upland location, in a manner that will prevent its later erosion into a waterway or wetland. All exposed soil and other fills shall be permanently stabilized at the earliest practicable date. In-stream work shall be conducted "in the dry" whenever practicable. This should be accomplished using stream diversion devices, other than earthen or stone cofferdams. In addition, work in waters of the United States should be performed during periods of low-flow or no-flow, whenever practicable.
- 6. Aquatic Life Movements: No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. A low flow channel must be maintained through any discharges placed for armoring across the channel so as to not impede flow in the waterway and/or not to block or impede the movements of anadromous, estuarine and resident fish. NOTE: Please refer to Appendix C for an expanded version of General Condition VI.C.6 entitled, "Guidance for Constructing Man-Made Stream Crossings and Scour Protection for Man-Made Stream Crossings to Pass Migratory Fish in The Coastal Plain Region of Maryland, and Lower Piedmont Region of Cecil, Harford, and Baltimore Counties, Maryland". This document includes recommended guidance on fish passage and hydrological parameters to ensure that man-made stream crossings do not adversely affect migratory fish.

7. Water Crossings:

- a. All temporary and permanent crossings of waterbodies shall be suitably bridged, culverted or otherwise constructed to withstand and to prevent the restriction of high flows and tidal flows; to maintain existing low flows; and to prevent the obstruction of movement by aquatic life indigenous to the water body, including anadromous, estuarine, and resident fish species.
- b. All water crossings (e.g., utility lines and road crossings) must be constructed roughly perpendicular to waters of the United States, including streams and wetlands. Where a utility line or access road is constructed parallel to a stream corridor, an undisturbed buffer shall be maintained between the utility line/access road and the waterway to avoid or minimize potential future impacts to waters of the United States. These potential impacts would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance.
- c. Water crossings must be constructed "in the dry" whenever practicable. This should be accomplished by using stream diversion devices other than earthen or stone cofferdams.
 - d. Equipment shall cross streams only at suitably constructed permanent or temporary crossings.
- e. Temporary structures and fills shall be removed and the area restored to its original contours and elevations, or to the conditions specified in the approved plans. The temporary structures and the areas of fill associated with these structures must be included in the total waterway/ wetlands impacts.
- 8. Discharge of Pollutants: All activities that are authorized under the MDSPGP-3 and that involve any discharge or relocation of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. 1251 et. Seq.), and applicable State and local laws and regulations.
- 9. Spawning Areas: Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill materials, in fish and shellfish spawning or nursery areas during spawning seasons shall be avoided. Impacts to these areas shall be avoided or minimized to the maximum extent practicable during all other times of year. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.
- 10. Waterfowl Breeding and Wintering Areas: Discharges into breeding and wintering areas for migratory waterfowl shall be avoided to the maximum extent practicable.
- 11. Environmental Values: The permittee shall make every reasonable effort to construct or operate the work authorized under the MDSPGP-3 in a manner that maintains as many environmental values as practicable, and that avoids or minimizes any adverse impacts on existing fish, wildlife, and natural environmental values.

D. Procedural Conditions:

- 1. Inspections: The permittee shall permit the District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary to ensure that the work is being performed in accordance with the terms and conditions of the MDSPGP-3. The District Engineer may also require post-construction engineering drawings (as-built plans) for completed work, and post-dredging survey drawings for any dredging work.
- 2. Compliance Certification: Every permittee who receives a written MDSPGP-3 verification shall submit a signed Compliance Certification Form within 60 days following completion of the authorized work and any required mitigation (but not mitigation monitoring, which requires separate submittals). Failure to submit the Compliance Certification Form by the permittee could result in the Corps taking appropriate non-compliance enforcement action against the permit holder. The blank Compliance Certification Form will be forwarded to the permittee with the MDSPGP-3 verification. The completed form will include the following:
- a. A statement that the authorized work either was or was not done in accordance with the MDSPGP-3 verification, including any general and/or specific conditions. If the activity was not done in accordance with the MDSPGP-3 verification, including any general and/or specific conditions, the permittee shall describe the specifics of the deviation from the authorized activity.

- b. A statement that any required mitigation was or was not completed in accordance with the permit conditions. If the mitigation was not completed in accordance with the permit conditions, the permittee shall describe the specifics of the deviation from the permit conditions.
 - c. The signature of the permittee, certifying the completion of the work and compensatory mitigation.

After the project is completed, the certification shall be sent to the Baltimore District at the following address:

U. S. Army Corps of Engineers Baltimore District Attn: CENAB-OP-R P. O. Box 1715 Baltimore, MD 21203-1715

3. Transfer of MDSPGP-3 Verifications: If the permittee sells the property associated with a MDSPGP-3 verification, the permittee may transfer the MDSPGP-3 verification to the new owner by submitting a letter to the Baltimore District Corps of Engineers office to validate the transfer. A copy of the MDSPGP-3 verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this MDSPGP-3 are still in existence at the time the property is transferred, the terms and conditions of this MDSPGP-3, including special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this MDSPGP-3 permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)	(Date)

- 4. Maintenance: The permittee shall maintain the work or structure authorized by the MDSPGP-3 in good condition and in compliance with the terms and conditions of the MDSPGP-3.
- 5. Property Rights: The MDSPGP-3 does not convey any property rights, either in real estate or material, or any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.
- 6. Modification, Suspension and Revocation: The MDSPGP-3, or any verification under it, may be either modified, suspended, or revoked, in whole or in part, pursuant to DA policies and procedures and any such action shall not be the basis for any claim for damages against the United States.
- 7. Restoration: The permittee, upon receipt of a notice of revocation of authorization under the MDSPGP-3, shall restore the wetland or waterway to its former condition, without expense to the United States and as directed by the Secretary of the Army or his authorized representative. If the permittee fails to comply with such a directive, the Secretary or his designee may restore the wetland or waterway to its former condition, by contract or otherwise, and recover the cost from the permittee.
- 8. Special Conditions: The Corps may impose special conditions on any project authorized under the MDSPGP-3, in cases where the Corps determines that special conditions are necessary to avoid or minimize adverse effects on the environment or on any other factor of the public interest. Failure to comply with all conditions of the authorization/verification, including special conditions, will constitute a permit violation/unauthorized work and may subject the permittee to criminal, civil, or administrative penalties, and/or restoration.
- 9. False or Incomplete Information: If the project is verified by the Corps or MDE under the MDSPGP-3 and subsequently discovers that it has relied on false, incomplete, or inaccurate information provided by the permittee, the MDSPGP-3 verification may be revoked and the Government may institute appropriate legal proceedings.
- 10. Compliance: Any activity performed in waters of the United States, including wetlands and navigable waters, that is not in compliance with all the terms and conditions of the MDSPGP-3 that includes the MDSPGP-3 Category List activity-specific conditions, constitutes unauthorized work and is subject to an enforcement action by the Corps or the EPA. Furthermore, the MDSPGP-3 does not delegate any Section 404 enforcement or regulatory authority. When unauthorized

work occurs in waters of the United States, including wetlands and navigable waters, it is subject to one or more of the following responses by EPA and/or the Corps:

- a. A Cease and Desist order and/or an administrative compliance order requiring remedial action.
- b. Initiation and assessment of a Class I administrative penalty order pursuant to Section 309(g) of the CWA.
- c. Initiation and assessment of a Class II administrative penalty for continuing violation pursuant to Section 309(g) of the CWA.
 - d. Referral of the case to the U. S. Attorney with a recommendation for a civil or criminal action.
- e. If the Corps determines that an after-the-fact application is appropriate, it will be reviewed following the appropriate procedures.
 - f. Any other appropriate response.



DEPARTMENT OF THE ARMY

BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS P.O. BOX 1715 BALTIMORE, MD 21203-1715

REPLY TO ATTENTION OF

200762534/07-NT-2096 Corps Permit Tracking Number

MDSPGP-3 CATEGORY I ACTIVITY (I-d) Road Crossings

The projects, structures and activities, listed below, must comply with all activity-specific conditions, in addition to all of the general conditions of this general permit.

This activity authorizes discharges of dredged or fill material associated with new construction of temporary and permanent roads, as well as widening of existing roads, which cross waters of the United States, including streams and wetlands. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and conditions listed below, in addition to the general conditions of this permit (Sections 10 and 404; all waters of the United States).

New road crossings will be reviewed based on the following order of preference: (a) bridge, (b) bottomless arch culvert, and (c) pipe or box culvert. Written documentation may be required to support the preferred crossing method.

Impact Limits: The total temporary and permanent impact to all waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, and other open waters, may not exceed ½ acre (21,780 square feet) and 500 linear feet of streams, rivers, and other open waters. In addition, no single road crossing can exceed 200 linear feet of streams, rivers, or other open waters. This activity can authorize multiple road crossings provided that the total temporary and permanent impact of all of the crossings meets the one half acre (21,780 square feet) and 500 linear feet impact limit, with no single crossing over 200 linear feet of impact to streams, rivers, and other open waters. To assure minimum impact when permanent impacts to streams, rivers, and other open waters are greater than 200 linear feet, a compensatory mitigation proposal may be required.

Conditions:

- (a) Application must be submitted to MDE for Corps authorization
- (b) Any permanent road crossing of tidal waters is limited to man-made tidal ditches or channels (e.g., roadside and agricultural ditches) that are no more than 12 feet wide measured at the mean high water line. All other permanent road crossings of tidal waters are to be reviewed as Category III activities.
- (c) The width of the fill must be limited to the minimum necessary for the crossing.
- (d) For permanent culverted crossings, the culvert must be depressed in accordance with the State of Maryland regulations.
- (e) The crossing must not be used as a berm for a permanent impoundment
- (f) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the road crossing is completed.

MDSPGP-3 CATEGORY I ACTIVITY (I-d) Road Crossings

-2

- (g) Any temporary crossing must be removed within 14 calendar days after the structure is no longer needed, subject to any time-of-year restrictions, and no later than one year after the installation date.
- (h) Any streams or wetlands impacted for temporary roads, or other temporary activities or structures, such as stream diversion devices, must be returned to pre-construction conditions, which includes contours, elevations, stream substrate, and revegetation with native, wetland species.
- (i) Prospective permittees should refer to General Condition VI.C.6 of the MDSPGP-3 (i.e., pertaining to Aquatic Life Movements), for guidance on hydrologic parameters for constructing man-made crossings, to ensure that the activity will not adversely affect migratory fish.



DEPARTMENT OF THE ARMY

BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS P.O. BOX 1715 BALTIMORE, MD 21203-1715

MDSPGP-3 PERMIT COMPLIANCE, SELF-CERTIFICATION FORM (10/1/06)

Corps Permit Tracking No. 200762534	Category & Activity Number <u>I-d</u>			
Project Name_road crossing	Applicant Name Mark Wuest & Rossana Santos			
Waterway unnamed tributary of Back Creek	County Talbot			
authorized work and any required mitigation (but not the mi	f your MDSPGP-3 authorization, you are required upon tion is required, within 60 days following completion of the tigation monitoring, which requires separate submittlas), to Corps of Engineers, Baltimore District to the address shown			
Please note that the permitted activity is subject to compliance inspections by U.S. Army Corps of Engineers representatives. As a condition of this permit, failure to return this notification form, provide the required information below, or to perform the authorized work in compliance with the permit, can result in suspension, modification or revocation of your authorization in accordance with 33 CFR Part 325.7 and/or administrative, civil, and/or criminal penalties, in accordance with 33 CFR part 326.				
Please provide the following information:				
1. Date authorized work commenced:	2. Date authorized work completed:			
3. Was all work and any required mitigation, completed in a general and/or specific conditions? YES NO	accordance with your MDSPGP-2 authorization, including all			
4. Explain in detail any deviations to the authorized work ar	nd/or mitigation (use additional sheets if necessary)			
5. Was mitigation accomplished through a contribution to YESNO (if NO complete Nos. 6 and 7 below 6. Wetland Mitigation: Required? YESNO Mitigation Mon	the Maryland Nontidal Wetlands Compensation Fund?			
7. Attach labeled photographs showing completed work inc				
	cluding mitigation, has been completed in accordance with the			
Signature of Permittee Date	Signature of Contractor/Agent Date			
Address:	Address:			
Telephone:	Telephone:			

Lane Engineering, LLC

Established 1986

Civil Engineers · Land Planning · Land Surveyors

15 WashIngton Street Cambridge, Maryland 21613 Tel 410-221-0818 Fax 410-476-9942

117 Bay Street P.O. Box 1767 Easton, Maryland 21601 Tel 410-822-8003 Fax 410-822-2024

114B West Water Street Centreville, Maryland 21617 Tel 410-758-2095 Fax 410-758-4422

May 15, 2007

Gilbert and Helen Cowley 2102 Rose Theatre Circle Olney, Maryland 21665

Re:

Property Located near Tilghman Island, Maryland

Dear Mr. and Ms. Cowley:

I am writing on behalf of Mark Wuest and Cherie Santos who recently purchased property known as Parcel B, Knapps Narrows Farm that lies immediately south of your property located at 6606 Tilghman Island Road. Mark and Cherie intend to construct a new house on the parcel and have applied for a wetland disturbance permit and related county/state approvals to construct a driveway from Tilghman Island Road through their property to access their building site. This access requires two non-tidal wetland crossings.

The State/Federal wetland permitting process requires they demonstrate they have avoided, and if avoidance is impossible, then minimized wetland disturbance. The only opportunity they have to minimize wetland crossings is an alternative access route. The only other access route that disturbs less wetland than their on-site driveway route is across your property and driveway to a point where they would turn south and enter their property. (See attached plan diagram)

You are not obligated to agree to this use of your driveway and you will not be required to grant access under any final permit they may be issued. However, Maryland Department of the Environment (MDE) requires that we at least inquire if such an alternative exists. Should you have no interest in granting them access, then please draft a short letter or email if you prefer to my attention stating your position and you won't be contacted regarding this issue again. If you are inclined to grant Mark and Cherie access, then we would prepare an access easement agreement including provisions for maintenance and repair for your approval.

Thank you for taking the time to review this unusual request. Please contact me should you have any questions. My email address is bstagg@leinc.com. Under separate cover, you, as a contiguous property owner, will receive notice of the wetland permit application which is identical to the enclosed drawing.

Sincerely,

William B. Stagg

enclosures

Alan Kampmeyer, MDE Mark Wuest/ Rosanna Santos



www.leinc.com mail@laneengineering.com

Bill Stagg

From: Cowley, Helen W [helen.cowley@fda.hhs.gov]

Sent: Tuesday, June 05, 2007 11:09 AM

To: Bill Stagg

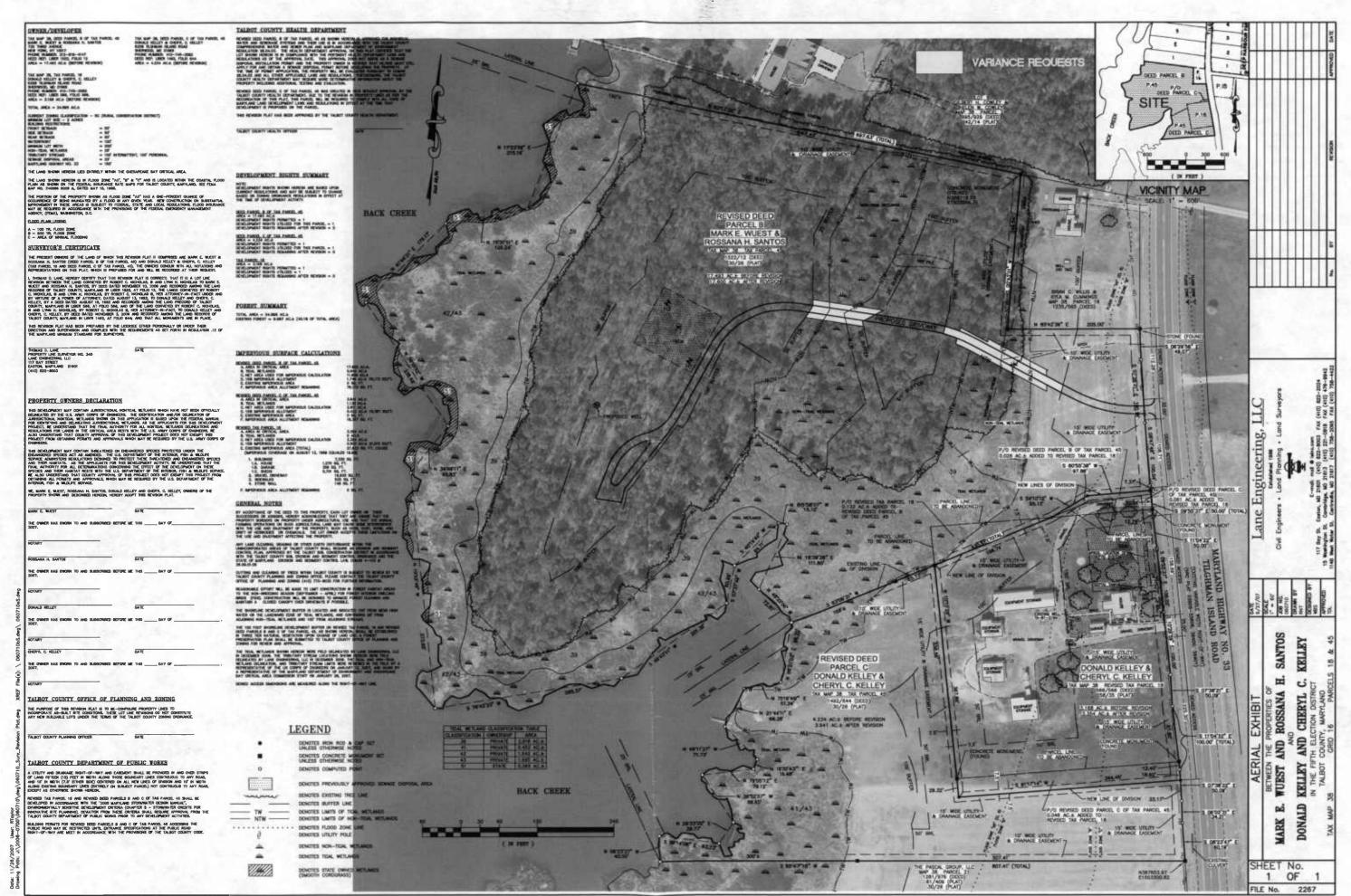
Cc: gil_cowley@discovery.com

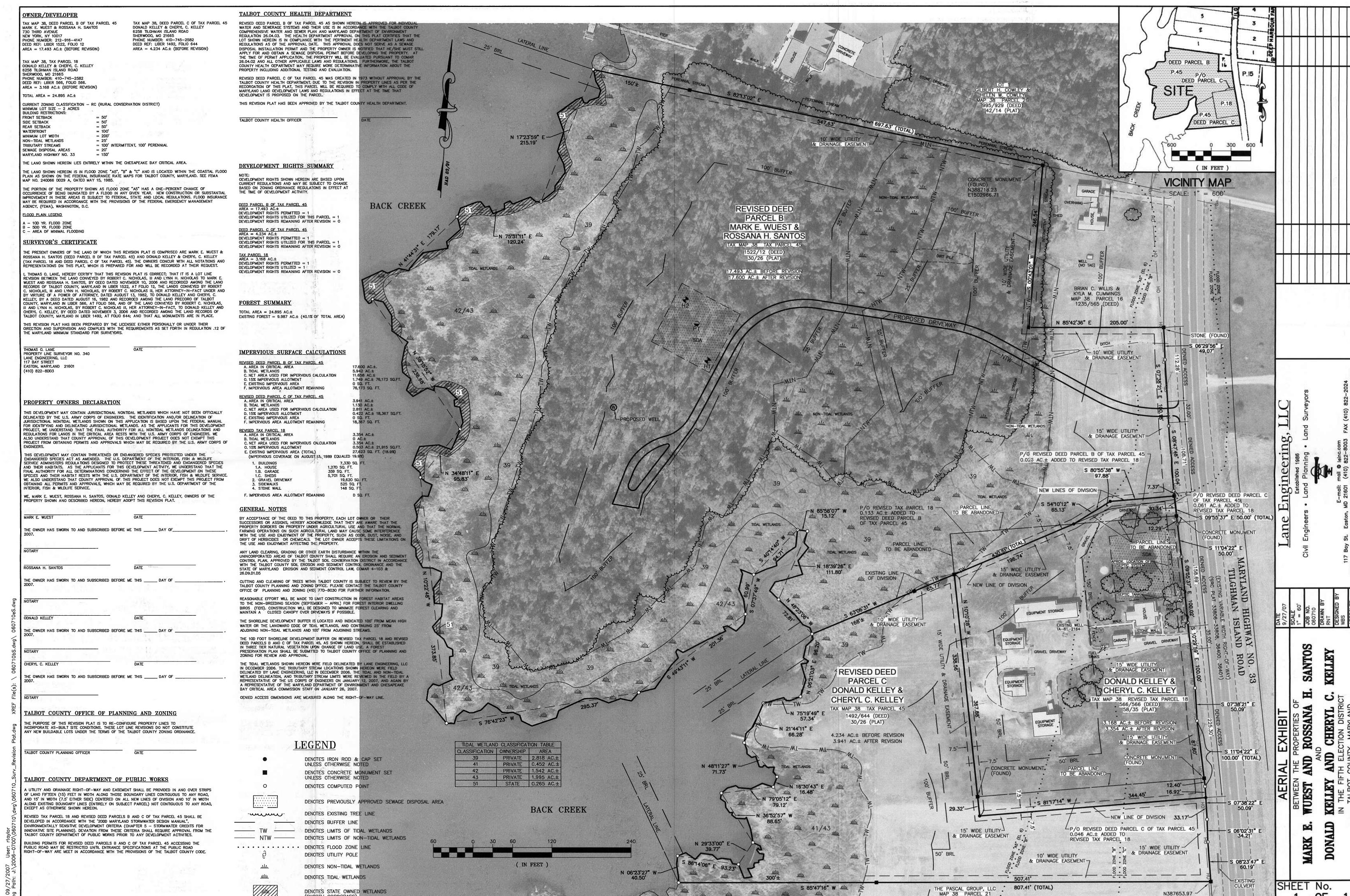
Subject: Property at 6606 Tilghman Island Road

Dear Mr. Stagg,

We received your letter of May 15, 2007 regarding construction of the Santos/Wuest driveway, on June 2, 2007. We understand the need to protect the wetlands, however, it is certainly not in our best interests to comply with the request. We will not permit the use of our driveway and property as part of an alternative access route to the Santos/Wuest property.

Helen Cowley





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FILE No.

1281/976 (DEED) 81/409 (PLAT) 30/26 (PLAT)

(SMOOTH CORDGRASS)

